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The rule of law at the national and international levels

Strengthening and coordinating United Nations rule of law activities

Report of the Secretary-General

Summary

This is the third annual report of the Secretary-General on strengthening and coordinating United Nations rule of law activities, an ongoing and critical process for the Organization. It is submitted pursuant to General Assembly resolution 65/32.

The Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General and supported by the Rule of Law Unit, continues to drive the Organization towards more strategic and effective rule of law assistance by ensuring greater overall quality, coordination and coherence of United Nations engagement.

The report illustrates key achievements and challenges in strengthening the rule of law at the national and international levels over the past year. It highlights continuing progress towards a more comprehensive and coordinated United Nations approach in support of national priorities and plans and identifies next steps.

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Contents

		Page
I.	Introduction	3
II.	Fostering the rule of law at the international level	4
	A. Codification, development, promotion and implementation of an international framework of norms and standards	4
	B. International and hybrid courts and tribunals	5
	C. Non-judicial mechanisms	6
III.	United Nations approach to the rule of law at the national level	7
	A. Framework for strengthening the rule of law	8
	B. Addressing critical challenges in conflict and post-conflict societies	12
IV.	Overall coordination and coherence	15
	A. Providing guidance and implementing the joint strategic plan	15
	B. Reaching out system-wide	16
	C. Strategic and joint engagement at the country level	16
	D. Measuring effectiveness and evaluating impact	18
	E. Strengthening the rule of law in the Organization	18
	F. Expanding partnerships	19
V.	Cultivating a just, secure and peaceful world governed by the rule of law	20
Annex		
	Views expressed by Member States	22

I. Introduction

1. Profound political changes have occurred in the Middle East and North Africa in response to popular calls for greater accountability, transparency and the rule of law. This throws into sharp relief the importance of United Nations engagement in an ongoing process to promote the rule of law at the national and international levels. The present report provides an opportunity to track progress made towards the realization of this broad and ambitious agenda and to reflect on the current challenges. It builds on the landmarks reached in this process so far: the Millennium Declaration (General Assembly resolution 55/2); the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616); the 2005 World Summit Outcome (see General Assembly resolution 60/1); the report of the Secretary-General on enhancing United Nations support for the rule of law (A/61/636-S/2006/980 and Corr.1) and the establishment of new system-wide arrangements consisting of the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit of the Executive Office of the Secretary-General, and a system of non-exclusive lead entities for various rule of law subsectors; the inventory of United Nations rule of law activities (A/63/64); the report of the Secretary-General on strengthening and coordinating United Nations rule of law activities (A/63/226); and the first and second annual reports of the Secretary-General on the subject (A/64/298 and A/65/318).

2. The United Nations is providing rule of law assistance in over 150 Member States spanning every region of the world. These activities take place in all contexts, including development, fragility, conflict and peacebuilding. Three or more United Nations entities engage in rule of law activities in at least 70 countries and five or more entities in over 35 countries. Evidence supports the trend towards more joint and comprehensive initiatives by key operational rule of law entities, particularly in conflict and post-conflict settings, where there are 17 peace operations with rule of law mandates.

3. The Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General and supported by the Rule of Law Unit, continues to make progress in system-wide strategic coordination and coherence of the Organization's engagement. Advances have been made in streamlining policy and guidance, supporting coherent action in countries and expanding partnerships with a view to placing national perspectives at the centre of rule of law assistance.

4. Yet, the United Nations continues to face challenges in providing effective rule of law assistance. They include the need to foster the political will and leadership necessary to make rule of law a national priority and advance reform efforts, and the lack of overall coordination among relevant national and international actors. It is necessary to meet these challenges in order to close the gap between international norms and standards and their effective implementation at the national level.

5. The present report is submitted pursuant to General Assembly resolution 65/32, in which the Assembly requested the Secretary-General to submit his annual report on United Nations rule of law activities, in particular the work of the Group and the Unit, with special regard to improving the coordination, coherence and effectiveness of those activities. Annexed to the report are the views provided to the Secretary-General by Member States on the rule of law and transitional justice in

conflict and post-conflict situations. Given the breadth of this subtopic, relevant information is provided throughout the report in accordance with the resolution.

II. Fostering the rule of law at the international level

A. Codification, development, promotion and implementation of an international framework of norms and standards

6. Rule of law at the international level is the very foundation of the Charter of the United Nations. In pursuit of this ideal, the Organization aims to establish conditions under which justice and the obligations arising from treaties and other sources of international law are respected. In May 2011, the Secretary-General issued a guidance note on the United Nations approach to rule of law assistance at the international level. The note provides the guiding principles and framework for the promotion of the rule of law in the relations between States, between States and international organizations and between international organizations. The note identifies the major legal instruments that guide the Organization's action. It describes how their principles operate in specific areas of rule of law assistance at the international level. The note establishes that the engagement of the United Nations in fostering the rule of law at the international level is rooted in the recognition that an effective multilateral system in accordance with international law is essential to addressing the challenges and threats confronting our world.

7. Addressing statelessness is a fundamental and integral part of United Nations efforts to strengthen the rule of law. An estimated 12 million people worldwide are stateless. The possession of nationality is essential to full participation in society and the enjoyment of fundamental human rights. Too few States are parties to the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons, the key legal instruments in the protection of stateless persons and the prevention and reduction of statelessness. On the occasion of the fiftieth anniversary of the 1961 Convention, the Office of the United Nations High Commissioner for Refugees (UNHCR), entrusted by the General Assembly with a mandate for the identification, prevention and reduction of statelessness and protection of stateless persons, has redoubled efforts to promote accession to and implementation of the two key statelessness conventions. The 2011 United Nations treaty event, organized by the Office for Legal Affairs, provides Member States with an opportunity to ratify or accede to these conventions. To give focus to the Organization's support to Member States in preventing and reducing statelessness, the Secretary-General issued a guidance note on the United Nations and statelessness in June 2011. The note emphasizes that the acquisition of nationality is the primary solution to statelessness and encourages States to guarantee gender equality in nationality laws and their implementation to prevent statelessness. Effectively addressing statelessness is also essential to conflict prevention efforts and supports social and economic development, but requires increased efforts by all stakeholders, including States, the United Nations system and affected communities.

8. During the reporting period, the United Nations continued to assist in the development and implementation of international norms and standards related to the rule of law. New standards were developed in the area of criminal justice, including

the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 65/228, annex) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (resolution 229, annex). The General Assembly held a high-level meeting marking the tenth anniversary of the United Nations Convention against Transnational Organized Crime and a special treaty-signing event, resulting in new ratifications, accessions or acceptances: eight for the Convention, nine for the trafficking in persons protocol, six for the smuggling of migrants protocol and nine for the trafficking in firearms protocol. Further to a pilot, the Conference of the Parties to the Convention created an open-ended intergovernmental working group on possible mechanisms to review implementation of the Convention and its Protocols. Any future review mechanism should enable participating countries to exchange expertise and best practices in the use of the Convention and help identify technical assistance needs to ensure that assistance programmes are better targeted.

9. In the field of disarmament, highlights include the successful Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, hosted by the United Nations in May 2010. It resulted in the adoption of a 64-point action plan for implementing the treaty and mandated the Secretary-General to organize a conference in 2012 on establishing a zone free of weapons of mass destruction in the Middle East. Other highlights include the entry into force, on 1 August 2010, of the Convention on Cluster Munitions, which is critical to countering the widespread suffering such weapons cause to civilians, including children. The Secretary-General also convened a high-level meeting in September 2010 to revitalize the work of the Conference on Disarmament, the world's single multilateral disarmament negotiating forum, which has remained inactive during the last 12 years.

10. In the field of international investment and free trade agreements, the United Nations Commission on International Trade Law (UNCITRAL) is developing a legal standard on transparency in treaty-based investor-State dispute resolution.

B. International and hybrid courts and tribunals

11. The International Court of Justice continued to contribute to rule of law at the international level, receiving new cases. Currently, 14 contentious cases and one request for an advisory opinion are pending. In July 2011, the Court delivered an order for provisional measures pursuant to the Request for Interpretation of the Judgment of 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia v. Thailand)*. This case illustrates the role the Court plays in peacefully solving legal disputes that underlie tensions between States. Initiatives by the Office of Legal Affairs to strengthen the role of the Court included encouraging States to make declarations recognizing the Court's compulsory jurisdiction at the 2010 and 2011 annual treaty events and a seminar on the Court's contentious jurisdiction which brought legal advisers of foreign ministries together with the President and other members of the Court in New York.

12. The arrests of Ratko Mladić and Goran Hadžić are milestones in the history of the International Tribunal for the Former Yugoslavia. At the International Criminal Tribunal for Rwanda, however, nine accused remain at large. The Tribunals

progressed in their completion strategies, which include outreach to national judiciaries, for example through the War Crimes Justice Project jointly undertaken by the International Tribunal for the Former Yugoslavia, the Organization for Security and Cooperation in Europe and the United Nations Interregional Crime and Justice Research Institute. A residual mechanism was established by the Security Council in resolution 1966 (2010), with branches in Arusha for Rwanda and The Hague for the former Yugoslavia, opening on 1 July 2012 and 1 July 2013 respectively. It will continue the jurisdiction and essential residual functions of both tribunals, including the trial of fugitives, ongoing witness protection, monitoring the enforcement of prison sentences and archive management. Similarly, the Residual Special Court for Sierra Leone, established by an agreement between the United Nations and the Government of Sierra Leone, will carry out the residual functions of the Special Court for Sierra Leone after the Charles Taylor case is concluded.

13. The Extraordinary Chambers in the Courts of Cambodia allows victims a robust, substantive role. An independent study showed that a majority of victims who participated in proceedings appeared satisfied with the court and the Duch verdict of July 2010. The second trial involving the top four surviving leaders of the Khmer Rouge, Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith, is ongoing. The Special Tribunal for Lebanon, the most recently created United Nations-supported tribunal, transmitted an indictment and accompanying arrest warrants regarding the 2005 killing of former Prime Minister Hariri and others to the Lebanese authorities on 30 June 2011. This is an important step towards fulfilling the Tribunal's unique mandate of trying terrorist offences, defined as a threat to international peace and security.

14. The International Criminal Court, the first permanent international criminal tribunal, now has 116 States parties. The United Nations remains committed to the Court and continued to cooperate by providing logistical support for the Court's field operations and submitting documents to the Prosecutor and defence counsel. The Court completed its first trial in the Lubanga case; a verdict is expected by late 2011. Following a referral by the Security Council of the situation in the Libyan Arab Jamahiriya pursuant to resolution 1970 (2011), the Prosecutor opened an investigation and the Court issued arrest warrants against Muammar Al-Qadhafi, his son Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi for crimes against humanity. The Prosecutor also sought authorization to commence an investigation, further to the request of President Alassane Ouattara, into serious crimes committed following the elections in Côte d'Ivoire in November 2010. Cooperation of States in relation to the implementation of the Court's arrest warrants remains problematic: of the 26 individuals subject to arrest warrants or summonses, 10 remain at large. In the year ahead, the Court will undergo change with the election of a third of its 18 judges and a new Prosecutor.

C. Non-judicial mechanisms

15. The dispatch of credible, independent, accountability-focused and publicly reporting international commissions of inquiry or fact-finding missions is an important catalyst in the efforts to combat impunity. They have been instrumental in highlighting violations suffered by women and children, for example by establishing the perpetration of sexual and gender-based violence crimes during conflict, which are often underreported and excluded from measures for justice and redress. In June

2011, the Human Rights Council received the reports of the international commissions of inquiry on the Libyan Arab Jamahiriya (A/HRC/17/44) and Côte d'Ivoire (A/HRC/17/48). To ensure adequate focus on sexual and gender-based violence, the United Nations seconded an expert to the latter commission. In April 2011, the Secretary-General's Panel of Experts on accountability in Sri Lanka concluded that there were credible allegations of a wide range of serious violations of international law committed by both the Government forces and Tamil Tigers in the final stages of the conflict. In April 2011, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to dispatch urgently a mission to the Syrian Arab Republic to investigate all alleged violations of international human rights law and to establish the facts and circumstances of such violations and of the crimes perpetrated (resolution S/16-1). More efforts should be made to ensure that these commissions can gather the necessary information in a timely manner and that their recommendations are followed up on.

16. Non-judicial mechanisms promoting compliance with international norms and standards include the monitoring and reporting mechanism on grave violations against children in situations of armed conflict pursuant to Security Council resolution 1612 (2005), implemented in 13 conflict-affected countries in 2010. This focused international pressure has resulted, inter alia, in the release of 2,973 minors from Maoist cantonments in Nepal and the reunification of 568 children, including 201 girls, with their families in Sri Lanka. Following this model, the Security Council, in its resolution 1960 (2010), requested the Secretary-General to establish monitoring, analysis and reporting arrangements as part of the United Nations response to conflict-related sexual violence. This should allow for listing and de-listing of parties credibly suspected of committing sexual violence and will facilitate commitments by parties to a conflict to prevent and address such violations.

17. Mapping exercises have also proven useful in establishing a record of violations and helping States to meet their investigatory and prosecutorial obligations, as illustrated by the OHCHR mapping exercise which documented the most serious violations of human rights and international humanitarian law committed in the Democratic Republic of the Congo between March 1993 and June 2003. The report on the mapping exercise formulated options for appropriate transitional justice mechanisms, recently followed by the Government's announcement on the creation of specialized chambers and the preparation of a draft law for consideration by Parliament.

III. United Nations approach to the rule of law at the national level

18. The United Nations approach to strengthening the rule of law involves, inter alia, strengthening national ownership of reform initiatives, providing support to national reform constituencies, developing strategic approaches aligned with in-country assessments and coordinating activities with key stakeholders including civil society (see A/63/226, paras. 17-21). The Organization's framework for engagement in the rule of law sector comprises constitution-making, law reform, electoral assistance and guarantees, capacity-building of justice and security institutions, transitional justice processes and mechanisms and engagement with civil society.

A. Framework for strengthening the rule of law

1. Constitution-making

19. Constitutions or their equivalent are the foundation for a State based on the rule of law. If properly designed and inclusive, the process of developing a constitution can play an important role in peaceful political transitions and post-conflict peacebuilding, as well as in preventing conflict by securing equal rights for marginalized groups. Over the past year, the United Nations has provided support on constitutional issues in Bhutan, Indonesia, Kyrgyzstan, the Libyan Arab Jamahiriya, Madagascar, Maldives, Nepal, Somalia, South Sudan and Zimbabwe. In South Sudan, UN-Women and the United Nations Mission in the Sudan (UNMIS) ensured the involvement of women leaders in the drafting of the South Sudan transitional constitution and the Government received advice on the inclusion of strong foundations to help prevent and address sexual violence. In August 2010, the constitutional review process in Kenya, supported by the United Nations, culminated in the promulgation of Kenya's new Constitution.

20. Political change in the Middle East and North Africa has made constitutional reform a priority for many nations. To respond to requests for assistance in a robust and coherent manner, the Organization needs to draw more consistently on its own lessons learned and internal capacities, such as the Standby Team of Mediation Experts in the Department of Political Affairs, as well as specialized external expertise.

2. The national legal framework

21. The United Nations continues to support States in the incorporation of international legal obligations into domestic law, as well as the development of legal foundations for the governance, oversight and accountability of justice and security institutions.

22. Achievements in the field of criminal justice include assistance to the Ministry of Justice of the Central African Republic in drafting new criminal and criminal procedure codes. In Nepal, the United Nations Development Programme (UNDP) supported the drafting of the penal code, criminal procedure code, civil code and civil procedure code.

23. New or amended legislation incorporating principles of justice for children was approved in Malawi, Rwanda, Liberia, Mauritania, Turkmenistan, Pakistan, Papua New Guinea, Philippines, Tunisia, Chile and Colombia. Through targeted advocacy, the United Nations Children's Fund (UNICEF) achieved a raise of the minimum age of criminal responsibility in Georgia, Kazakhstan and Bolivia. A recent UNICEF guidance paper on juvenile justice legislative reform should guide future efforts.

24. A joint study by the United Nations Office for West Africa (UNOWA) and OHCHR on trafficking of persons in West Africa resulted in guidelines for the adoption of domestic legislation in compliance with international and regional human rights norms and standards. To address piracy, the Office of Legal Affairs, together with the United Nations Office on Drugs and Crime (UNODC) and the International Maritime Organization, developed guidance for national legislation on

piracy pursuant to the United Nations Convention on the Law of the Sea and other instruments (see www.un.org/Depts/los/piracy/piracy.htm).

3. Institutions of justice, governance, security and human rights

25. United Nations rule of law assistance strengthens the institutional capacity necessary to give force and meaning to constitutional guarantees, laws, policies and regulations. For example, for citizens to have confidence in the rule of law, electoral complaints must be handled fairly, impartially and expeditiously according to the laws of the country. The United Nations has provided support to strengthen electoral dispute mechanisms in Burundi, Haiti, Kyrgyzstan and Iraq, among other countries.

26. Experience shows that the needs of policing, justice and corrections institutions must be addressed in a coordinated manner to improve the delivery of justice and safety. Innovative approaches seek to improve the performance of justice institutions. For example, the establishment of prosecution support cells in the Democratic Republic of the Congo facilitates the investigation and prosecution of serious criminal cases. In Liberia, the development of a justice and security hub could provide a model for similar engagement in other settings. In Burundi, United Nations mentoring and other capacity-building efforts, including the creation of a pool of court clerks and magistrates trained in court administration and management, led to substantially enhanced transparency and performance in judicial processes. In Sierra Leone, UNDP-funded mobile courts brought magistrates to three new towns in Southern Province. In Timor-Leste, UNDP supported the position of a judge inspector to help ensure the quality of services, while the establishment of a new integrated case management system should improve efficiency in processing cases.

27. Recognizing the potential of informal mechanisms for strengthening access to justice, the Organization engaged with informal justice systems in, for example, Afghanistan, Bangladesh, Nepal, the Occupied Palestinian Territory, Timor-Leste, South Sudan, Somalia and Indonesia. UNDP, UNICEF and UN-Women jointly issued an extensive study identifying entry points for engagement with informal justice systems with a view to strengthening the protection and fulfilment of human rights, particularly women's and children's rights, in future programming. In Uganda and South Sudan, support was given to the codification of customary laws, in order, inter alia, to ensure the protection of women's property rights in marriage and inheritance and better address sexual and gender-based violence. In Darfur, Indonesia and Afghanistan the focus was on increasing the awareness of religious and informal justice leaders of issues such as women's rights and the relationship between formal and informal justice. In Somalia, a UNDP-supported referral system in Somaliland allowed clan elders to refer cases of sexual and gender-based violence to formal courts, resulting in 44 per cent more such cases reaching the formal courts in 2010.

28. UNODC and UNICEF continued to facilitate the conceptual and programmatic shift from juvenile justice to the broader area of justice for children. UNICEF capacity-building focused on police in over 30 countries and judges in 25 countries. In 2010, approximately 45 countries from all regions of the world took concrete steps to implement the United Nations guidelines on justice in matters involving child victims and witnesses of crimes. Notable advancements include the replication of Mongolia's juvenile justice committees in five provinces and strengthened

capacity of social workers, police and courts in Kiribati to handle young offenders. In Afghanistan, UNODC was instrumental in developing a separate juvenile justice system. To promote diversion and alternatives to detention, UNICEF launched an online toolkit providing clear, user-friendly guidance and practical tools. Diversion schemes and alternative programmes are operating in over 20 countries, resulting, for example, in some 1,600 children benefiting from diversion schemes in the Sudan in 2010.

29. Building police capacity to address sexual violence was a significant area of focus this year. UN-Women and the African Union-United Nations Hybrid Operation in Darfur trained 500 Sudanese female officers on investigation techniques in sexual violence cases. Support from UN-Women, the United Nations Population Fund and UNICEF resulted in the inclusion of content on gender, sexual and gender-based violence and child protection in the national police training curriculum in Uganda. The special police for the protection of children and women in the Democratic Republic of the Congo were assisted through the construction and equipping of offices. A UNDP-supported review and analysis of the impact of citizen security programming in Nicaragua led to reforms including the establishment of mobile community units in the women's office of the national police to address gender issues and family violence.

30. The Organization has continued to support and advocate for prioritizing corrections, including through infrastructure assistance, capacity development and increased deployment of corrections officers to peace operations. In recognition of these efforts, the South Sudan Prison Service and UNMIS received the 2010 International Corrections and Prisons Association management and staff training award for excellence. In Haiti, the development of a prison database helped identify escaped detainees. In the Democratic Republic of the Congo and Sierra Leone, corrections officers were trained in basic human rights and detention management. In Burundi, seven prisons in the country were rehabilitated and equipped and a prison security plan was developed.

31. The International Commission against Impunity in Guatemala (CICIG) continues to work with Guatemalan counterparts to prosecute cases of violent organized crime. Despite facing operational and security challenges, the Commission is widely regarded as having strengthened Guatemalan justice institutions through prosecution of several high-impact cases, vetting initiatives and other forms of technical assistance. As a result, CICIG is attracting increased international interest, especially in Central America.

4. Transitional justice

32. Over the past year, United Nations support for transitional justice processes continued in Afghanistan, Bosnia and Herzegovina, Burundi, Colombia, Côte d'Ivoire, Guatemala, the Democratic Republic of the Congo, Kenya, Liberia, Nepal, Sierra Leone, Togo, Solomon Islands and Uganda. More is anticipated following the profound political changes in the Middle East and North Africa. Sustainable transitions will require mechanisms to end impunity and ensure criminal accountability, truth, reparations and other guarantees of non-recurrence.

33. National consultations are critical to ensuring that transitional justice mechanisms reflect the specific needs of affected communities. In Burundi, the final report of the national consultations, supported by OHCHR and the United Nations

Office in Burundi (BNUB), was endorsed by the President and a technical committee was tasked with setting the parameters for a truth and reconciliation commission. A UNDP-administered basket fund will ensure that international support is coordinated and resources are pooled. In Nepal, OHCHR facilitated victim participation in transitional justice dialogues and held consultations on truth-seeking bills designed to draw nationwide participation of victims groups. The United Nations Integrated Peacebuilding Office in Sierra Leone supported the Human Rights Commission of Sierra Leone and engaged local authorities in implementing the recommendations of the Truth and Reconciliation Commission. Further, the United Nations Operation in Côte d'Ivoire supported the work of the Dialogue, Truth and Reconciliation Commission established by the Government of Côte d'Ivoire to promote national reconciliation and social cohesion.

34. While efforts to establish reparations for survivors of human rights abuses have progressed in Colombia, Guatemala, Nepal, Sierra Leone, Timor-Leste and Uganda, greater attention is needed to ensure implementation. Technical assistance focused on the design and implementation of reparations schemes and support to victim and civil society participation in reparations discussions. In the Democratic Republic of the Congo, OHCHR and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) helped national authorities and other relevant stakeholders develop options to provide reparations to victims of sexual violence. In Uganda, the findings of specialized field research on gender and reparations by OHCHR and the Uganda Human Rights Commission with the support of UN-Women were presented to the Government, donors and civil society. In Colombia, UN-Women's participation in parliamentary debates ensured the incorporation of a gender perspective in the recently enacted Victims and Land Restitution Law, resulting, for example, in the inclusion of children born after rape as beneficiaries of the law. While ensuring adequate redress for victims of conflict-related violations is a State obligation under international law, creating linkages between reparations and development programmes can strengthen the sustainability and transformative potential of the former, particularly with regard to women.

35. The establishment of witness and victim protection programmes in accordance with international norms and standards received support in Argentina, Nepal, Kenya, Rwanda, the United Republic of Tanzania and Togo. An OHCHR-UNODC high-level expert seminar in Uganda, organized in cooperation with the Ugandan Law Reform Commission, and a regional seminar for South Asia in Nepal, allowed for the exchange of best practices in this area. A seminar was also organized for the Truth, Justice and Reconciliation Commission in Togo. Training for the Rwandan judiciary and law enforcement agencies on witness protection and management aims to develop national capacity to receive referral cases from the International Criminal Tribunal for Rwanda.

36. Children's views and experiences provide unique and important contributions to transitional justice processes. Child protection actors thus advocate for protection procedures and legal safeguards to allow for the participation of children in all aspects of transitional justice. The key principles for children and transitional justice (see A/65/219, paras. 47-50) provide overarching considerations for children's participation and specific precepts for judicial mechanisms, truth commissions and truth-seeking mechanisms, local, traditional and restorative justice processes, reparations for children and institutional reform. The UNICEF report *Children and*

Truth Commissions offers guidelines for such initiatives, where children serve as both victims and witnesses in matters related to grave crimes.

5. Empowering individuals and civil society

37. Engagement with the public and civil society is a major component of the United Nations approach to strengthening the rule of law. The Organization promotes dissemination of information about legal rights to enhance public awareness and foster a rule-of-law culture. In Burundi, for example, BNUB assisted with the translation of the new criminal code into Kirundi and ensured its wide distribution. In Georgia, demand for assistance from the Georgian Legal Aid Service increased significantly, particularly among internally displaced persons and minorities, after a UNDP-supported awareness-raising campaign.

38. Facilitating wider access to justice for vulnerable groups continues to be a priority of United Nations rule of law programming, with activities in over 22 countries across the world. For example, in Somalia, UNDP helped rape survivors obtain access to formal court proceedings, which was previously thwarted by the dominance of clan elders. In Afghanistan, the United Nations Assistance Mission in Afghanistan strengthened the capacity of the Ministry of Justice to provide legal aid lawyers.

39. Civil society organizations play a powerful role in helping overcome barriers which often separate citizens, especially the most marginalized and vulnerable, from State institutions. In Indonesia, UNDP supported grass-roots civil society by promoting legal awareness and paralegal services in three provinces. In partnership with the Huairou Commission, linkages were created among grass-roots women's organizations in six African countries to enhance their capacity to monitor and protect women's land and inheritance rights in informal justice systems. Through funding from the United Nations Democracy Fund, civil society initiatives assisted marginalized groups in Gabon and Guatemala in obtaining legal identity papers and broadened participation in constitutional reform processes in Bolivia, Ghana and Nepal.

B. Addressing critical challenges in conflict and post-conflict societies

40. Conflict undermines the rule of law, including by weakening the capacity of justice and security institutions. This plays a significant role in perpetuating impunity, generating instability and delaying recovery. Institutions often lack basic infrastructure, administrative systems, financial and skilled human resources and oversight and governance mechanisms. Justice and security professionals may be subject to corruption or the target of threats, undermining institutional independence and integrity. Impunity of human rights abusers erodes trust in government leaders and institutions, and consequently impedes the creation of a culture of respect for the rule of law. Conflict and post-conflict situations are thus a major focus of United Nations rule of law assistance, with particular challenges and priorities.

1. Achieving early and visible results

41. United Nations assistance aims to gradually restore confidence in the rule of law, especially among displaced and vulnerable groups, often most affected by conflict. To do so, the United Nations seeks to achieve early and visible results by

addressing immediate needs for legal protection and increased justice and security service delivery, while laying the foundations for long-term reforms and institutional strengthening. In the Democratic Republic of the Congo, for example, the United Nations has collaboratively supported the prosecution of individual high-profile cases of sexual and gender-based violence, while working with national authorities to lay the foundations for long-term institutional reform. An important step has been the establishment of the Justice and Corrections Standing Capacity in the Department of Peacekeeping Operations, which will help start up justice and/or corrections components and reinforce existing components in field operations.

2. Developing sector-wide approaches

42. Uneven and uncoordinated financial and technical support to the rule of law sector can result in systemic dysfunction. For example, the concentration of assistance on the policing sector can overburden justice and corrections institutions, as arrests lead to more and longer pretrial detention. Consequently, court dockets often overflow and overcrowded prisons result in worsening hygienic conditions, riots and escapes, posing serious security concerns.

43. A sector-wide approach should be applied where possible, and priorities for sequencing rule of law interventions should be clearly articulated. In Guinea-Bissau, the United Nations has strengthened linkages between law enforcement, prosecutorial and judicial authorities. This approach facilitates national ownership and coherence, binding together justice and security institutions in an overall programme of reform enhancing the sustainability of improvements. In Uganda, a sector-wide approach is credited with measurable improvements to the corrections sector. In contrast, the lack of a sector-wide approach in, for example, Liberia has driven uneven resource allocations across the penal chain, and left the needs of the corrections sector unaddressed.

3. Strengthening political will and national ownership

44. Political will is critical to ensuring a strong enabling environment and sustainable support for rule of law reforms. Yet, in many conflict and post-conflict settings indifference or suspicion surrounds efforts to strengthen the rule of law. Faced with competing needs and daunting challenges, Governments rarely make rule of law a top priority. Sustained and coherent advocacy by United Nations leaders, the General Assembly and the Security Council, and high-level bilateral dialogue with senior Government officials are vital to ensuring that the rule of law is given the necessary attention and political space to gain traction. Following focused advocacy and support, the new Government of Haiti has declared the rule of law one of its four top priorities. With regard to sexual violence in the Democratic Republic of the Congo, the engagement of the Special Representative of the Secretary-General on Sexual Violence in Conflict combined with greater political dialogue and cooperation between MONUSCO, UNDP and the Government has led to increasing numbers of convictions within the security forces.

45. National authorities and civil society should be encouraged to take an expanded role in the design and implementation of rule of law programmes to ensure their greater stake in success. National Governments can illustrate their commitment by joining donor partners in investing financial resources in rule of law

programmes. In Kenya, the Government is the single largest funding source for a sector-wide programme.

4. Ensuring accountability for international crimes at the national level

46. International law requires States to develop and strengthen their national capacities to investigate and prosecute international crimes. States parties to the Rome Statute of the International Criminal Court have recognized the desirability of assisting each other in strengthening this capacity and the need for international organizations to support such work.[1] The United Nations has been engaged in developing the requisite prosecutorial capacity in a number of places, including Bosnia and Herzegovina, Colombia, the Democratic Republic of the Congo, Kenya, Kosovo, Sierra Leone, the Sudan, Timor-Leste and Uganda.

47. There is currently, however, no systematic way to foster the political will necessary for States to domesticate the Rome Statute and bring those requiring assistance together with international actors willing to fund and/or provide such assistance. To start addressing this gap, the United Nations supported a retreat, organized by the International Center for Transitional Justice, to initiate discussions among relevant actors, including the United Nations, from the international criminal justice, development and legal communities. The next step will be to forge closer connections between development partners and national stakeholders to develop an action plan for capacity-building, which will link with existing initiatives such as the toolkit developed by the Open Society Justice Initiative in collaboration with the European Union.

5. Strengthening the linkages between rule of law and economic recovery

48. Much of the United Nations rule of law response in conflict and post-conflict settings focuses on initial safety and security concerns. Yet, the rule of law also plays a significant role in economic recovery. Mutual trust and investor confidence are facilitated by functioning justice and security institutions as well as a robust legislative framework based on international norms and standards, including international trade law (see General Assembly resolution 65/21). Solutions to complex issues relating to land tenure or natural resource extraction often require legal reform and the adjudication of disputes over legal rights. Excessive pre-trial detention, particularly common in post-conflict settings, can have far-reaching socio-economic consequences for individuals, families and communities and undermine national efforts to achieve development goals.[2]

49. The Organization is thus working to strengthen more systematically the linkage between rule of law and economic recovery in post-conflict settings. For example, in the UNDP early recovery policy implementation plan for the Sudan, "rule of law and access to justice" and "livelihoods" are the main pillars of recovery programming. In the Democratic Republic of the Congo, the UNDP project for security and socio-economic reintegration of women survivors of sexual and gender-based violence in North and South Kivu is designed to dovetail livelihoods with access to justice. In Iraq, the UNCITRAL secretariat cooperated with the United Nations Industrial Development Organization (UNIDO) to support the preparation

[1] Resolution RC/Res.1, adopted by the Review Conference on 8 June 2010.

[2] Open Society Foundations and UNDP, *The Socioeconomic Impact of Pretrial Detention*, 2011, available from www.soros.org.

of new legislation on public procurement and alternative dispute resolution in the context of a broader private sector development programme. Such promising initiatives linking rule of law with economic recovery and human development should be built upon and replicated where appropriate.

IV. Overall coordination and coherence

A. Providing guidance and implementing the joint strategic plan

50. In keeping with the 2009-2011 joint strategic plan of the Rule of Law Coordination and Resource Group, efforts continue to strengthen the coherence, quality and coordination of rule of law policy and guidance. The annual review of ongoing and planned materials shows notable progress in guidance development. Stronger partnerships could further align substantive policy approaches, especially in areas where many entities are individually or jointly developing guidance, such as transitional justice, sexual and gender-based violence and pre-trial detention and alternatives. Areas with little ongoing or planned guidance development, such as law-making, legal reform and social and economic justice, may require further focus. A survey of guidance needs in the field will help to establish priorities and ensure that guidance development meets the needs of practitioners.

51. The Group's complementary system of endorsement of material of system-wide relevance has been used to endorse the United Nations rule of law indicators and the instructor's manual for the rule of law training programme of the Department of Peacekeeping Operations for judicial affairs officers in peacekeeping operations. This process will help maximize knowledge and best practices across the United Nations system, while harmonizing approaches and minimizing duplication of efforts.

52. The Group has recently piloted the United Nations unified rule of law training programme in partnership with the United Nations Staff College in Turin. This system-wide programme, which complements existing, more focused modules, will ensure that relevant staff members understand the Organization's unified approach to rule of law and promote it in their relations with Member States. The next step is to institutionalize the training, which will require additional resources and the continued commitment of all partners.

53. The second objective of the joint strategic plan is to implement the Organization's common approach to rule of law assistance at the national level in Nepal and Liberia. Further to Liberia's addition to the agenda of the Peacebuilding Commission in September 2010, programming on rule of law is being strengthened and harmonized in the context of the peacebuilding priority plan, which focuses on three pillars: justice, security and national reconciliation. With the joint support of the United Nations Mission in Liberia (UNMIL) and UNDP, the Government of Liberia submitted a peacebuilding programme covering the country's urgent needs in justice, security and national reconciliation as outlined in the peacebuilding priority plan. In Nepal, after an initial mapping of existing international assessments, Government strategies and ongoing assistance, a joint donor-United Nations effort is identifying options to improve international support over the medium term.

54. As envisaged by the third principal objective of the Group's joint strategic plan, a high-level meeting of the General Assembly on the rule of law at the national and international levels will be held during the high-level segment of the Assembly's sixty-seventh session (General Assembly resolution 65/32, para. 13). The modalities of the event will be finalized during the sixty-sixth session. To focus Member States' attention in anticipation of the high-level event, the President of the General Assembly convened an informal thematic debate on the rule of law and global challenges on 11 April 2011. The Secretary-General stands ready to support Member States in preparing a concrete output for the high-level event that will ensure that the rule of law remains high on Member States' agenda.

B. Reaching out system-wide

55. A priority of coordination and coherence efforts continues to be reaching out to the over 40 United Nations actors involved in rule of law activities. The third annual system-wide meeting brought the United Nations system together to examine ways to strengthen joint programming on the rule of law. Participants reviewed current tools and practices for measuring rule of law development and the impact of assistance. They considered the UN-Women report *Progress of the World's Women: In Pursuit of Justice* with a view to exploring system-wide implementation of its recommendations.

56. The United Nations rule of law website and document repository (www.unrol.org) continues to be the central gateway to information on United Nations rule of law efforts, making over 900 documents available to staff and the public, along with a range of knowledge resources, news and articles on the United Nations rule of law activities.

57. United Nations-World Bank cooperation on the rule of law remains an important priority. The United Nations rule of law actors have significantly contributed to the World Bank's 2011 *World Development Report* focusing on conflict, security and development. The report highlights the importance of delivering justice, security and jobs to break recurring cycles of violence which impede development.

58. The report also highlights the importance of addressing social and economic justice issues to prevent conflict and ensure long-term development. For the United Nations, this is an invitation to engage more coherently in this field. The upcoming report of the Secretary-General on legal empowerment and poverty reduction, requested by the General Assembly in its resolution 64/215, should further flesh out the important linkage between rule of law, access to justice and poverty reduction and identify promising approaches in this field.

C. Strategic and joint engagement at the country level

59. United Nations partnerships on rule of law have continued to strengthen on the ground, thanks to the shared view that joint programming is an effective way to capitalize on the comparative advantages of the actors involved. Collaboration has not followed a single pattern, allowing for greater flexibility for national and international actors. Deeper cooperation, however, will require overcoming institutional hurdles and establishing system-wide incentives for joint programming.

60. Over the last year, UNDP country offices and peacekeeping missions have increased their joint programming in number and volume, with new initiatives in Haiti, the Democratic Republic of the Congo, South Sudan and Chad. For example, UNDP and United Nations police have expanded their cooperation in training the national police in the Ituri district of the Democratic Republic of the Congo. With the drawdown of the United Nations Mission in the Central African Republic and Chad, the handover strategy builds on the collective achievements of the Mission and UNDP in strengthening access to justice. Ongoing collaboration between UNDP and the Department of Peacekeeping Operations on rule of law is being expanded, for example through a joint programme on police in Timor-Leste to facilitate the transition after the closing of the United Nations Integrated Mission in Timor-Leste in 2012. In Liberia, UNMIL and UNDP are harmonizing support to the Liberia National Police, the Bureau for Corrections and Rehabilitation and the Bureau for Immigration and Naturalization under national leadership.

61. In Burundi, impact and coherence were strengthened by integrating staff of the Department of Peacekeeping Operations, OHCHR and UNDP into a joint justice unit and their interventions into a single human rights and justice programme. Targeted training and a pilot project on court administration in four jurisdictions have resulted in rapidly improved judicial performance in the pilot courts, now ranked the highest in the country, and bilateral partners have chosen to replicate the project in four other jurisdictions. UNDP and UN-Women have continued to pilot their joint programming in women's access to justice in post-conflict settings in Nepal, Colombia and Uganda, working closely with OHCHR on issues of gender and reparations.

62. Growing awareness of the impact of transnational crimes on justice and security leads to stronger and focused joint programming efforts at the regional level. In the West Africa Coast Initiative, UNOWA, the Department of Peacekeeping Operations, UNODC and the International Criminal Police Organization are jointly building capacity for law enforcement and criminal justice reforms in Guinea-Bissau, Sierra Leone, Côte d'Ivoire and Liberia in support of the ECOWAS regional action plan. Transnational crime units were established in three of these countries. UNODC increasingly builds its regional programmes as common platforms for action with national, regional and multilateral partners. The establishment of a new inter-agency task force, co-chaired by the Department of Political Affairs and UNODC, augments the United Nations system's response to transnational organized crime and drug trafficking. To ensure coherence, the task force will report regularly to the Rule of Law Coordination and Resource Group on its rule of law-related initiatives.

63. A harmonized response to sexual violence in conflict is illustrated by the Team of Experts on Rule of Law/Sexual Violence in Conflict, established pursuant to Security Council resolution 1888 (2009). Composed of a team leader based in the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict and representatives of the Department of Peacekeeping Operations, OHCHR and UNDP, it has for instance facilitated the development of programmes in the Democratic Republic of the Congo for training of the armed forces, augmentation of the prosecution support cells with experts on sexual violence and the deployment of female magistrates to the eastern part of the country.

D. Measuring effectiveness and evaluating impact

64. The United Nations must base its rule of law assistance on thorough assessments, baseline data and ongoing monitoring and evaluation. Measuring the effectiveness of assistance will increase recognition of successful methods and encourage new approaches to improving results.

65. The Organization has made progress in developing tools to help national Governments gather the necessary data to guide reform efforts. Officially launched in July 2011, the United Nations Rule of Law Indicators, jointly developed by the Department of Peacekeeping Operations and OHCHR, is a tool to monitor changes in the performance and characteristics of national criminal justice institutions. As evidenced by pilots in Haiti and Liberia, national Governments can play a leading role in implementing this tool. It is hoped that Governments adopting the indicators will continue to use them as an ongoing monitoring mechanism. UNODC and UNICEF continued to work with countries to develop juvenile justice data collection systems based on the Manual for the measurement of juvenile justice indicators. Among others, the indicators helped the establishment of the baseline for juvenile justice reform in Guinea-Bissau and the development of a unified database on juvenile justice in the Syrian Arab Republic.

66. On the basis of these experiences, the Organization is working to enhance its knowledge of how and when to integrate measurements of progress into rule of law interventions, as illustrated by the ongoing UNDP project to develop a users guide to measuring justice. We must work towards common impact measuring mechanisms in close cooperation with Member States. Only if we deliver against one set of shared objectives and indicators, illustrating joint progress in meeting mandates and operational milestones, will we truly deliver as one. In the area of justice for children, the recent establishment of an inter-agency Child Protection Monitoring and Evaluation Reference Group is a promising step towards coordination of monitoring and evaluation initiatives among child protection partners and across thematic areas. Such initiatives must draw upon and be adapted more broadly to the rule of law field to increase accountability and improve the assistance provided to Member States.

E. Strengthening the rule of law in the Organization

67. The system of administration of justice has continued its essential task of upholding the rule of law between the Organization and its staff members, who now have access to a two-tier professionalized judicial system to address their claims against the Organization's administrative decisions. As of 17 June 2011, the United Nations Dispute Tribunal had issued 416 judgements, and the United Nations Appeals Tribunal, which recently completed its fourth session, had rendered 126 judgements.

68. Progress has been made on fairness and transparency in procedures regarding the Al-Qaida sanctions regime. In resolution 1989 (2011), the Security Council incorporated two so-called "sunset" mechanisms, which lead to the automatic de-listing of petitioners unless a decision to retain a name on the list is taken by the Committee established by Security Council resolution 1267 (1999). One of the mechanisms involves the Ombudsperson, appointed in 2010, who now has a

mandate to make recommendations to the Committee on the retention or removal of petitioners.

F. Expanding partnerships

69. The United Nations cannot achieve its goals working in isolation. A critical aim of the United Nations coordination and coherence efforts is, therefore, to develop meaningful partnerships with all stakeholders to successfully promote the rule of law and strengthen the assistance provided to Member States.

70. The funding available for strengthening the rule of law remains highly fragmented among donors, with bilateral support outweighing multilateral assistance by a significant ratio. As previously outlined (see A/64/298), a declared commitment to national ownership is too often belied by donor-driven projects and uncoordinated programming involving imported solutions and implementation by nationally affiliated donor partners. Donors label and approach the same rule of law issues differently. Though coordination mechanisms exist at country level, there is little comparative analysis of coordination practice and consistency of method. The need for greater coherence is starkest in conflict-affected situations where many actors are present.

71. To take stock of practices and challenges across the field, and to advance a consensus on ways to address these challenges, the United Nations co-organized a conference in 2009 which brought together 70 representatives of bilateral donors, recipient countries, international and regional organizations and non-governmental organizations. To harmonize approaches, it was concluded that a system should be put in place whereby multilateral and bilateral donors work in a coordinated and collaborative manner with partner countries and practitioners to guide and manage efforts to improve the effectiveness of rule of law assistance.

72. Another long-standing challenge hampering progress in this field has been the relative absence of national stakeholders and grass-root experiences in high-level policy discussions. To contribute to addressing this imbalance, the Secretary-General recommended in 2008 that a forum be provided for national actors from recipient countries to express their perspectives on the effectiveness of rule of law assistance (A/63/226, para. 78). A report entitled "New voices: national perspectives on rule of law assistance",[3] issued in April 2011, was the result of a consultative process convened by the Rule of Law Unit in 2009 and 2010 with 16 national rule of law experts from 13 countries and the participation of United Nations entities and development partners. One shared recommendation was the need to create mechanisms for greater, meaningful coordination and coherence of approaches to rule of law assistance among national and donor partners.

73. Along the same lines, the informal thematic debate on the rule of law and global challenges, held by the General Assembly on 11 April 2011, highlighted that, too often, the support provided by the international community, including bilateral donors and assistance providers, has not yielded the expected results at the national level and that efforts must be made to ensure that the voices of national actors more systematically inform the global discussion on rule of law assistance.

[3] See www.unrol.org/files/FINAL%20National%20Perspectives%20Report.pdf.

74. Similarly, the World Bank's 2011 *World Development Report* highlights the difficulty for countries to obtain external support on justice and security and the fragmentation of assistance, emphasizing the need for a more coordinated international response to meet the justice and security needs of countries trapped in cycles of fragility and conflict.

75. The record to date thus strongly suggests the need for an inclusive international policy forum that brings together all stakeholders, for which the United Nations appears to be a natural home. The forum would give donor and recipient Governments, multilateral organizations, non-governmental organizations and private sector actors, including foundations, the opportunity to coordinate strategy, share information on ongoing projects and exchange best practices and country knowledge and experience. It could link with other global initiatives such as the Global Forum on Law, Justice and Development, a multiconstituency knowledge partnership to be launched shortly by the World Bank.

V. Cultivating a just, secure and peaceful world governed by the rule of law

76. Strengthening the rule of law at the national and international levels is a long-term endeavour. Past recommendations[4] provide an important road map for the work of the Rule of Law Coordination and Resource Group and the Rule of Law Unit. In addition, under the leadership of the Deputy Secretary-General, the Group and the Unit will, in the framework of the joint strategic plan for 2012-2014, seek to:

(a) Expand the use of joint programming in peacekeeping and special political mission areas by increasing efforts to assess, plan and implement jointly from the outset;

(b) Enhance collaboration among United Nations entities present in non-mission settings by assessing and planning jointly in response to Member States' requests for support;

(c) Establish system-wide incentives for joint programming to help overcome institutional hurdles;

(d) Strengthen the Organization's approach to measuring the effectiveness of rule of law assistance;

(e) Continue and strengthen joint training of United Nations rule of law professionals;

(f) Convene relevant actors to share practices and foster policy to better assist Member States in pursuing social and economic justice through the rule of law.

77. Seven years after the World Summit, the high-level event on the rule of law, mandated by the General Assembly in resolution 65/32 for the beginning of the sixty-seventh session in 2012, will be an opportunity to renew the commitment to the universal adherence to and implementation of the rule of law at both the national

[4] See A/63/226, paras. 76-78 and A/64/298, para. 97.

and international levels and to take stock of progress. In view of this important opportunity, I recommend that Member States seek:

(a) To support the United Nations in its efforts to enhance coherence, coordination and effectiveness of its assistance as outlined in paragraph 76; and

(b) To think creatively about ways how the international community can enhance and better coordinate its efforts to strengthen the rule of law, including through an inclusive international policy forum on the rule of law, for which the United Nations seems the natural home.

Annex

Views expressed by Member States

1. The General Assembly, in its resolution 65/32, requested the Secretary-General to seek the views of Member States before preparing the present report.

2. By a note verbale dated 7 February 2011, the Secretary-General invited Governments to submit, no later than 22 April 2011, their views on the Sixth Committee sub-topic "Rule of law and transitional justice in conflict and post-conflict situations". In preparing their submissions, Member States were invited to pay particular attention to "issues such as combating impunity and strengthening criminal justice, the role and future of national and international transitional justice and accountability mechanisms, informal justice systems, etc." (A/C.6/63/L.23, para. 4).

3. The Secretary-General has received views expressed by Australia (21 April 2011), Austria (5 May 2011), the Czech Republic (23 April 2011), Denmark (31 May 2011), Finland (21 April 2011), Kenya (3 May 2011), New Zealand (12 May 2011), Oman (8 April 2011), Qatar (19 May 2011), Slovenia (25 April 2011), Sweden (17 May 2011), Switzerland (25 April 2011), Turkmenistan (2 May 2011) and the United Kingdom of Great Britain and Northern Ireland (5 May 2011). Those views are presented below.

Australia

[Original: English]

Australia welcomes the substantial work being undertaken by a range of agencies and entities within the United Nations to promote the rule of law at the national and international levels, particularly in conflict and post-conflict situations. These situations — always complex — require sophisticated, multidimensional responses covering the entire spectrum of assistance, including peacekeeping, political and security sector reform, the implementation of transitional justice mechanisms and the provision of capacity development and technical assistance. Australia views the rule of law as being fundamental to any strategy aimed at building a stable, prosperous society and a prerequisite to achieving the Millennium Development Goals. As noted by the *World Development Report 2011*, countries where government effectiveness, rule of law and control of corruption are weak have a 30 to 45 per cent higher risk of civil war and significantly higher risk of extreme criminal violence. In recent years, Australia has invested significant resources and engaged heavily with the international community to advance this important agenda. Our report details some of the key areas of activity.

A. Rule of law assistance in fragile and post-conflict settings

Australia's approach to justice and security sector reform recognizes the severe development challenges faced by fragile and post-conflict States, such as weak governance, limited administrative capacity, chronic humanitarian crises, persistent social tensions and violence. Australia takes an integrated approach to justice reform. Our interventions aim to strengthen the connections among key formal

justice institutions (such as police, prisons and the courts). We also acknowledge the sometimes significant role played by customary and community-based justice systems post-conflict and the importance of ensuring that such customary systems operate within a human rights framework. Australia's support for justice reform balances long-term goals (such as State-building and economic development) with responding to the immediate needs of people affected by insecurity. Addressing the drivers of conflict, including supporting accessible and locally legitimate justice systems, is critical for resolving and preventing further conflict — a point also reinforced by the World Bank in the 2011 edition of the *World Development Report*.

A primary focus of Australia is on ensuring that States have appropriate legal frameworks to combat corruption and transnational organized crime — terrorism, money-laundering, proceeds of crime, cybercrime, people smuggling and trafficking in persons — as well as enhancing frameworks for international legal cooperation, including extradition and mutual assistance. However, Australia also recognizes that technical assistance and capacity-building in other criminal justice areas such as sentencing and victims' protection legislation is important. Our capacity-building projects involve delivering workshops and training for legal, judicial and law enforcement officials, hosting legal exchanges, conducting mentoring and pairing programmes to build natural capacity, developing legal frameworks and legal guidelines, working collaboratively with partner countries to deliver legal and policy advice and assisting with the publication of laws.

Two recent examples highlight the progress made in these areas and the effectiveness of these partnerships.

First, Australian agencies, together with New Zealand counterparts, have been working in partnership with Tonga since mid-2009 to assist Tonga in reviewing and reforming its police legislation. Following this assistance, the Tonga Police Act was passed on 14 September 2010 and entered into force on 2 February 2011. We are now working with Tonga to develop regulations and procedures to ensure effective implementation of the Police Act.

Secondly, Australian officials, deployed to Papua New Guinea under our "Strongim Gavman" or "Strengthening Government" engagement programme, assisted with the establishment of the Proceeds of Crime and International Crime Cooperation Unit within the Office of the Prosecutor of Papua New Guinea in 2009. This resulted in Papua New Guinea's first civil forfeiture order made in respect of a matter prosecuted under the Proceeds of Crime Act in July 2010.

More generally, Australia supports justice and security sector reform across a range of fragile situations, as demonstrated by our engagement in Timor-Leste (led by the United Nations) and Solomon Islands (led by the Regional Assistance Mission to Solomon Islands (RAMSI)), and more recent engagement in Afghanistan. Australia also provides significant, ongoing capacity-building and technical legal assistance to countries in South and South-East Asia (Indonesia and Cambodia), Africa and the Pacific (Papua New Guinea, Solomon Islands, Vanuatu, Samoa, Tonga and Nauru) to strengthen the rule of law and ensure their security and stability.

Consistent with aid effectiveness principles, Australia seeks to encourage local leadership and ownership of justice sector reform programmes, aligning our assistance with partner Government policies and systems. In fragile States, Australia

supports processes which promote the ownership and inclusion of broader populations and, where politically feasible, marginalized groups.

Australia's experience in a range of settings highlights the importance of developing a shared understanding, among donor countries as well as the various Australian Government agencies involved, of the particular justice and security development challenges faced in delivering development assistance. For example, strong interdepartmental dialogue among Australian Government agencies at the headquarters and field levels, cross-Government agreement on objectives and sequencing, common planning and monitoring frameworks and practical coordination arrangements have been features of Australia's support to RAMSI.

B. Transitional justice

Transitional justice mechanisms play an integral role in enabling countries that have experienced conflict to move forward and achieve lasting peace. In particular, they can be a critical tool to re-establish the legitimacy and trust in public institutions needed to foster security and development. These mechanisms encompass a wide range of judicial and non-judicial responses that are adapted to the particular context of post-conflict societies. Such responses must be informed by victims' perspectives, particularly those of marginalized groups, consider the root causes of the conflict and conform to international standards. They must also take into account the challenges of dealing with a legacy of large-scale human rights violations and the possible role played by the host Government and its military or security services during the conflict.

Importantly, there is no "one size fits all" approach to transitional justice. A post-conflict setting will require different management and economic and social strategies for a post-authoritarian regime. Each situation is unique, with close consultation required with the affected community to tailor the most effective response (what the *World Development Report* describes as a "best in context" approach to institution-building). This may involve a combination of measures covering criminal prosecutions, truth-seeking processes, reparations programmes, gender justice, security sector reform and efforts to memorialize the past. Past experience has shown that a combination of these measures is far more effective than any single measure.

Australia has always been a strong supporter of efforts to combat impunity for those accused of the most heinous crimes. To this end, Australia is a long-standing supporter of the International Criminal Court and other international tribunals.

Blanket amnesties and immunities from prosecution must not prevent those most responsible for such crimes from being held accountable. The ad hoc international tribunals for the former Yugoslavia and Rwanda, as well as the Special Court for Sierra Leone, have made an unprecedented contribution to the international community's goal of ending impunity for serious international crimes. Their jurisprudence has enriched our understanding of genocide, crimes against humanity and war crimes, as well as the practice and procedures of international criminal law.

Justice, where possible, is best pursued at the national level. The challenge for the international tribunals is to ensure they leave a legacy of strengthened national legal capacity behind them. For example, the International Tribunal for the Former

Yugoslavia has fostered the development of national courts by the transfer of cases of low-level indictees to competent national jurisdictions. Similarly, the Extraordinary Chambers in the Courts of Cambodia, which form part of the national legal system and have national participation in their organs, are hoped to contribute, over time, to the building of national judicial and administrative capacity.

Through their outreach activities these tribunals have created the space for public engagement on questions of accountability and demonstrated that the pursuit of justice is not a threat to peace.

The Government of Australia continues to strongly support the efforts of the international courts and tribunals, including through funding, through the distinguished service of our nationals and through our work in the international community to encourage cooperation with these bodies.

Equally important is the need for truth-seeking processes or "traditional" justice mechanisms, which provide an important complement to judicial mechanisms by promoting accountability at the grass-roots level. Such transitional justice mechanisms should be designed so as to strengthen democracy and peace within the community and to engage and empower civil society. The development of strong, durable institutions with appropriate oversight mechanisms, civil society organizations that give voice to victims and the marginalized, and a well-trained and educated bureaucracy are all necessary elements to transition from post-conflict environments to a stable future.

C. Deployment of a civilian capacity

Early engagement in conflict and post-conflict situations is important. Steps should be taken as soon as possible to sow the seeds for a long-term recovery. Standing capacities are required to enable the rapid deployment of the necessary expertise to conflict-affected environments. To this end, Australia has established a rapidly deployable group of civilian specialists to assist with stabilization and recovery efforts in conflict-affected countries with the urgency required.

The Australian Civilian Corps will complement Australia's police and military contribution to the United Nations and other missions. Australia recognizes that military and police intervention or humanitarian aid, while essential, cannot by themselves deliver lasting security or development gains. Civilian functions, in addition to those performed by police, are also necessary to create and maintain peace and stability. Within conflict-affected countries, the capacity of Governments to provide security and basic services for their citizens is limited. Public administration, security sector reform and economic recovery must also be prioritized to support basic service delivery in order to deliver a lasting peace.

The Australian Civilian Corps provides a comprehensive civilian response to deal with issues arising in post-conflict situations and includes individuals with expertise in agriculture, law and justice, education administration, engineering, financial management, needs assessment and donor coordination. These specialists may work with a range of stakeholders such as local beneficiaries, government officials, other donors or civilian specialists from other countries to provide stabilization advice, technical assistance and capacity development as the security and humanitarian situation progresses and the focus shifts to State-building and

reconstruction. Australia believes that such a response can be necessary to deliver immediate, tangible results on the ground.

The International Deployment Group of the Australian Federal Police manages Australian overseas police deployments to capacity-building missions, regional post-conflict reconstruction missions and United Nations peacekeeping missions, with approximately 350 staff deployed offshore at times. In addition, assistance through the International Network of the Australian Federal Police is focused on building local policing capacities to combat transnational crime, including support for police-to-police collaboration, intelligence gathering in support of international law enforcement efforts and the provision of training and other technical assistance. On a smaller scale, the Forensic and Data Centre provides a range of specialized assistance.

D. Protection of civilians

The protection of civilians is a core function of United Nations and regional peace operations, presenting complex policy and operational issues that must be addressed if missions are to discharge their mandates successfully. Considerable progress has been made by the United Nations and the African Union to strengthen the protection of civilians, but challenges remain.

The recent draft Strategic Framework for Drafting Comprehensive Protection of Civilians Strategies in United Nations Peacekeeping Operations represents a major step forward by standardizing mission-wide strategies to maximize a mission's ability to better protect civilians; strengthening the coherence of a mission's effort in fulfilling its mandated tasks; and strengthening accountability and reporting lines.

Recognizing the fundamental importance of peacekeeping and peacebuilding efforts in conflict and post-conflict situations, Australia, through the Asia Pacific Civil-Military Centre of Excellence and its participation in the Challenges partnership, is committed to enhancing the effectiveness of the United Nations in its peacekeeping operations by emphasizing the protection-of-civilians component.

In April 2010, the Centre hosted the third International Forum for the Challenges of Peace Operations in Australia and addressed the challenges of protecting civilians in multidimensional peace operations. A report outlining the key findings of the International Forum was launched at the Challenges Forum Seminar in February 2011, co-hosted by Australia.

While much progress has been made on the protection-of-civilians doctrine at the strategic level, further work is required at the operational level on developing supporting military and policing strategies.

Work has commenced in Australia to develop a protection-of-civilians doctrine for the Australian Defence Force. Australia is happy to share this work as it develops and to learn from the experiences of other countries and, to this end, will host a senior-level civil-military affairs conference on "Enhancing the protection of civilians in peace operations: from policy to practice" from 24 to 26 May 2011. This conference will take stock of recent developments at the strategic and operational levels, examine more closely the specific issues of including women and children within the protection of civilians agenda and consider possible training initiatives.

As part of our broader work to improve the capacity of peacekeepers to protect civilians, Australia recognizes that some groups within society, namely women and girls, remain particularly vulnerable during and after conflict. Australia supports the inclusion of women in all conflict prevention, conflict resolution, rehabilitation and peacebuilding efforts as mandated by Security Council resolution 1325 (2000) on women and peace and security. In 2010 Australia announced that it would provide funding to give United Nations peacekeepers additional predeployment or in-country training on how to protect women from sexual violence in conflict and post-conflict situations.

Australia also believes that women must be more adequately represented in post-conflict reconstruction processes in order to guarantee the ongoing stability of peace. Australia's support of resolution 1325 (2000) has also included increasing women's participation in peacebuilding and rebuilding communities. This is highlighted through our support for women in the Afghan electoral process. Peacekeepers and staff deployed to RAMSI have also regarded resolution 1325 (2000) as an essential tool in promoting the participation of women in decision-making. More work is needed, and Australia is developing a national action plan for resolution 1325 (2000).

As demonstrated by these initiatives, Australia remains committed to working with the United Nations and Member States to ensure that all persons enjoy fairness, equality, accountability and justice through promotion of the rule of law. Nowhere is this more important than in conflict and post-conflict societies. In many instances this will be a long-term endeavour but essential nonetheless in order to ensure lasting peace and prosperity.

Austria

[Original: English]

Austria reaffirms its strong commitment to an international order based on international law, including human rights law, and the rule of law, with the United Nations at its core. We believe that international law and the rule of law are the foundations of the international system. Clear and foreseeable rules, respect for and adherence to these rules, and an effective multilateral system to prevent or sanction violations are preconditions for lasting international peace and security. In our view it is imperative to strengthen the rule of law in all its dimensions, i.e., at the national, international and institutional levels.

The international community has paid increased attention in recent years to advancing justice and the rule of law, especially in conflict and post-conflict societies. These experiences have taught us important lessons, which should shape our future activities in the area of transitional justice and the rule of law, in particular within the framework of the United Nations. At the centre are the need to ensure a common basis of international norms and standards and the mobilization of the necessary resources for an investment in justice. In his 2004 report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), the Secretary-General provided useful guidance on where to focus and how to streamline our efforts in order to be successful. He raised awareness of the need to increase coordination and cooperation at all levels of the United Nations as well as with actors outside the Organization. These efforts have to be pursued further. The

recommendations of the 2004 report are still valid and need to be fully implemented.

The efforts of the United Nations to strengthen the rule of law in conflict and post-conflict situations must be based on national assessments, national participation and national needs and aspirations. Although basic legal norms are universal and non-negotiable, there is no one-size-fits-all formula in fragile situations. For our strategies to be effective they have to seek to instil a sense of national ownership, support domestic reform constituencies and adapt to realities on the ground.

As highlighted in the 2004 report, the approach to transitional justice must be holistic and comprehensive (see S/2004/616, para. 64 (k)). We must pay careful attention to the needs of victims and civil society and bear in mind the need for complementarity among various transitional justice mechanisms. United Nations strategies to ensure accountability in post-conflict situations must extend beyond international courts and tribunals to include the full range of transitional justice mechanisms available for achieving justice, reconciliation and sustainable restoration of peace and security for conflict-torn societies.

United Nations engagement in fragile and transitional societies should immediately focus on strengthening accountable security and justice sectors in accordance with international standards in order to prevent a relapse into conflict. The goal of our engagement must be to render conflict-torn societies more resilient, promote understanding and recognition for the rule of law and provide a long-term perspective of sustainable peace. To be effective our engagement must strengthen the role of civil society and promote women as leaders of recovery.

Austria welcomes the increasing support and activities by the General Assembly and the Security Council for strengthening the rule of law. At the 2005 World Summit, Heads of State and Government recognized the need for universal adherence to and implementation of the rule of law at both the national and international levels and reaffirmed their commitment to an international order based on the rule of law and international law. In 2006, at the initiative of Liechtenstein and Mexico, the General Assembly included a new item entitled "The rule of law at the national and international level" on its agenda. Since then, annual reports on the rule of law are prepared by the Secretary-General and discussed in the Sixth Committee.

Austria strongly supports the envisaged high-level meeting of the General Assembly on the rule of law to be held at the beginning of the sixty-seventh session in September 2012 (Assembly resolution 65/32). While the modalities of this meeting will have to be discussed and finalized during the sixty-sixth session, Austria highly commends the initiative of the President of the Assembly at its sixty-fifth session, Joseph Deiss, to launch a discussion and refocus the attention of Member States on the rule of law by organizing an interactive thematic debate in the Assembly on the rule of law and global challenges on 11 April 2011. The debate, which highlighted the importance of the rule of law in relation to conflict situations as well as development, met with great interest among Member States and was an important stepping stone in preparing the high-level meeting. Michael Spindelegger, Minister for Foreign Affairs of Austria, one of the keynote speakers at the debate, pointed out that, while much progress had been made by the United Nations since the 2005 World Summit, lessons must be learned from recent events and greater emphasis should be placed on conflict prevention, national ownership and improving cooperation and coordination with respect to all rule of law activities. In

that regard, he welcomed the Secretary-General's idea of launching a new dialogue forum on the rule of law under the auspices of the United Nations (see www.un.org/en/ga/president/65/initiatives/Rule%20of%20Law/Austria%20-%20FM.pdf for the full keynote address).

The Security Council has also been giving growing attention to the rule of law. From 2004 to 2008, Austria organized a series of panel discussions and a retreat of experts to analyse the Council's role in strengthening a rules-based international system. In April 2008, the final report from that initiative was issued (A/63/69-S/2008/270), which contained 17 recommendations on how the Council could support the rule of law in its various fields of activity. The Council held two open debates and adopted two presidential statements on the rule of law in 2006 and 2010, respectively. While it was a member of the Security Council, Austria, together with like-minded countries, consistently worked to mainstream the promotion of the rule of law in the daily work of the Council and its subsidiary bodies and to enhance the Council's working methods. The Council adopted important resolutions in various rule of law areas, including on the protection of civilians, children in armed conflict and women and peace and security. Further examples include the resolutions on the establishment of the Ombudsperson of the Council Committee established pursuant to resolution 1267 (1999) and the residual mechanism for the United Nations ad hoc tribunals, as well as various resolutions mandating United Nations missions. These activities of the Security Council should continue, given its key role in the restoration of and respect for the rule of law and its support for transitional justice mechanisms (see S/2004/616, para. 64 (a)).

A. Combating impunity and strengthening criminal justice

1. International and mixed tribunals

In Austria's view, efforts to combat impunity and strengthen criminal justice at the international level constitute an important pillar of the rule of law and contribute substantially to the prevention of conflicts and serious violations of international humanitarian law. Therefore, Austria is a strong supporter of the International Criminal Court, ad hoc and mixed tribunals and other international criminal justice mechanisms as measures to end impunity for the most serious crimes of international concern. Since these mechanisms have an important role regarding the rule of law and transitional justice by ensuring accountability and guaranteeing due process, procedural safeguards and victims' rights and gender justice, the Security Council should insist on full cooperation with international and mixed tribunals, including in the surrender of accused persons upon request (see S/2004/616, para. 64 (j)).

Austria strongly believes that the International Criminal Court is one of the most effective tools to buttress the rule of law and combat impunity. In this regard, Austria commends the stocktaking of international criminal justice undertaken by the First Review Conference of the Rome Statute, held in Kampala at the invitation of the Government of Uganda from 31 May to 11 June 2011. Austria co-sponsored the amendment to article 8 of the Rome Statute and supported the amendment concerning the crime of aggression. In addition, Austria supports the Court in various other ways; for example, it was the first country to conclude an agreement with the Court on the enforcement of sentences. More recently, it has entered into discussions with the Court concerning the signing of a memorandum regarding the

relocation of witnesses. In recognition of the need to make reparations to the victims, Austria has made substantial contributions to the Court's Trust Fund for Victims. In combating impunity and strengthening criminal justice, the important role of civil society must also be emphasized. To encourage civil society efforts in this regard, each year Austria contributes substantially to the Coalition for the International Criminal Court.

Austria remains committed to supporting the United Nations ad hoc tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon, which have made significant progress in their work and thereby play an instrumental role in strengthening international criminal justice. Moreover, Austria promotes the court established by Bosnia and Herzegovina for the prosecution of war criminals and organized crime. International judges and public prosecutors are assigned for the prosecution of war crimes and international advisers are tasked with advising on the prosecution and punishment of corruption and organized crime.

2. National justice systems

While international courts and tribunals have decisively influenced the development of international criminal law and have become pillars of the rule of law, our efforts and resources should not focus only on such institutions. In fragile and transitional societies, United Nations initiatives must increase their support for national justice sectors and domestic reform constituencies, as well as for strengthening national legislation, taking into account international norms and standards.

In this respect Austria actively implements the necessary measures at the national level. Austria has adopted legislation with regard to cooperation with the International Criminal Court, including judicial cooperation and enforcement of sentences in national law. In line with Austria's commitment to the rule of law and the fight against impunity, the Austrian Penal Code already contains provisions for the punishment of genocide and for all such crimes which constitute crimes against humanity or war crimes. However, in order to explicitly meet the requirements resulting from the principle of complementarity as enshrined in the Rome Statute and pursuant to the Court's resolution ICC-ASP/5/Res.3, Austria is in the process of integrating the crimes falling under the jurisdiction of the Court explicitly into domestic criminal law. Austria is complementing this initiative with legislation to explicitly integrate grave breaches of the Geneva Conventions of 1949 and their Additional Protocols and the Convention against Torture, as well as the International Convention for the Protection of All Persons from Enforced Disappearance into domestic criminal law. This project is expected to be completed by the end of 2011.

B. The role and future of national and international transitional justice and accountability mechanisms

In Austria's view, crises will not be solved sustainably unless proper and timely attention is paid to justice, reconciliation, rehabilitation, reconstruction and development. In this regard, the support of the international community is crucial. We must ensure that rule of law and transitional justice considerations are integrated into the strategic and operational planning of United Nations peace operations (see

S/2004/616, para. 64 (b)). Any approach to coming to terms with the past must take into consideration the specific situation and context and the full range of justice and reconciliation mechanisms, including prosecution efforts, truth and reconciliation commissions, national reparation programmes for victims and institutional reform, as well as traditional dispute resolution mechanisms, must be considered. In this context, the United Nations should increase its efforts to promote cooperation in prosecutions and documentation, to strengthen the role of civil society, especially vulnerable groups such as victims, witnesses and women, in prosecutions, and to promote reconciliation through truth-seeking. Often the process of being heard seems more important in post-conflict societies than the judicial outcome of formal proceedings. Nevertheless, reconciliation in post-conflict situations must be supported by a clear commitment to end impunity for serious violations of international humanitarian and human rights law, in particular to hold accountable the main perpetrators. Effective conflict resolution and long-term reconciliation depend upon the two mutually reinforcing concepts of peace and justice. And, although amnesties enable a reconciliation process with regard to some perpetrators, they must not be granted for serious violations of international humanitarian and human rights law.

1. Prevention

The efforts of the international community to promote the rule of law should focus more on prevention. The rule of law has a fundamental role in preventing conflicts and mass atrocities, stabilizing post-conflict societies and preventing the re-emergence of conflicts. As the Secretary-General put it in his 2004 report, "in matters of justice and the rule of law, an ounce of prevention is worth significantly more than a pound of cure" (S/2004/616, para. 4). In this regard, Austria supports the work of the Special Adviser for the Prevention of Genocide, who is mandated to collect existing information, particularly from within the United Nations system, to act as an early warning mechanism and to make recommendations to the Security Council through the Secretary-General. This illustrates clearly that the connection between massive and systematic violations of human rights and threats to international peace and security cannot be ignored. In Austria's view it is important to explore additional ways to strengthen the genocide prevention capacities of the United Nations.

The United Nations should increase its efforts to assist States in exercising their responsibility to protect their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and to improve their early warning capability. At the 2005 World Summit, all Member States accepted that responsibility and pledged to act in accordance with it. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. Austria supports the three-pillar strategy proposed by the Secretary-General in his report on implementing the responsibility to protect (A/63/677). Most recently, the Security Council took decisive action to protect civilians in armed conflict by adopting resolution 1973 (2011).

In our view the rule of law is key in implementing the responsibility to protect. It is essential to look at the responsibility to protect from a rule of law perspective, since the rule of law is a cross-cutting theme of all three pillars. Austria fully endorses the Secretary-General's view that the rule of law is "fundamental to preventing the perpetration of crimes relating to the responsibility to protect" and

that "the United Nations system, including through the engagement of donor countries, should increase the rule of law assistance it offers to Member States. The goals should be to ensure equal access to justice and to improve judicial, prosecutorial, penal and law enforcement services for all. Such steps would make it more likely that disputes within society could be resolved through legal, rather than violent, means" (A/63/677, para. 47).

2. Awareness

Knowledge and education are key to the prevention of mass atrocities and their reoccurrence. Austria has learned its lessons from its history. As a member of the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research, Austria is highly committed to promoting education about the Holocaust in schools, universities and communities and encourages it in other institutions as stipulated by the Declaration of the Stockholm International Forum on the Holocaust in January 2000. Although ways of coming to terms with history vary in different cultures, we believe that knowledge about the Holocaust in its unique gravity and lasting impact can contribute to better understanding the root causes of genocide, war crimes, crimes against humanity and other mass atrocities. Such awareness will prepare the ground for other post-conflict societies to deal with their own past, for communities to respond to genocide and for survivors to attempt to live with their experiences. Awareness is an important precondition for preventing future breaches of human rights or international humanitarian law.

Under this commitment Austria contributed to the international conference on "The global prevention of genocide: learning from the Holocaust", organized by the Salzburg Global Seminar in 2010 with a view to providing a conceptual framework to link education, remembrance and research into the Holocaust to current efforts to prevent genocide, ethnic cleansing, racism, anti-Semitism and xenophobia around the world. A follow-up conference is planned for the summer of 2012, to be organized by the Salzburg Global Seminar, the United States National Holocaust Museum and the Federal Ministry for European and International Affairs of Austria. The objective of this conference will be to raise awareness of the linkage between Holocaust education and genocide prevention by addressing decision makers (Government officials and other policymakers) in the field of education.

3. Protection of civilians

The effective protection of civilians in armed conflict is another key element of prevention. Austria's pronounced international engagement for comprehensive standards for the protection of civilians is exemplified by Security Council resolution 1894 (2009) on the protection of civilians in armed conflict, adopted unanimously under the Austrian presidency of the Council in November 2009. Although the last decade has seen significant progress in this area, the development of international norms and standards for the protection of civilians has not been fully matched by actions on the ground, including the reinforcement of the rule of law in societies torn by conflict. The resolution acknowledges that protection is a broad concept encompassing international humanitarian law and human rights law and goes beyond the domain of physical protection alone. Therefore, the Council mandates peacekeeping operations to assist States during and after conflict in the establishment of an environment in which all actors are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and which

are consistent with international human rights norms and standards. In paragraph 11 of the resolution, the Council for the first time lists the full range of transitional justice mechanisms (prosecution, truth-seeking, reparation and institutional reform) and thus takes a holistic approach on the issue of fighting impunity for serious violation of international law, including violations of human rights and international humanitarian law. This was reiterated in the Council's presidential statement of 22 November 2010 (PRST/2010/25, para. 9). The link between addressing the legacy of past human rights violations and sustainable peace and security was reaffirmed by the Council in its resolution 1960 (2010), in which it clearly stated that "ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent future such abuses". On the occasion of the tenth anniversary of resolution 1325 (2000) on women and peace and security, the Council developed concrete indicators to track implementation of that resolution, including post-conflict institutions and processes of transitional justice, reconciliation and reconstruction.

In order to support the implementation of resolution 1894 (2009) and increase awareness, Austria supports the development of an African specialization course for the protection of civilians in armed conflicts. The curriculum of this course has been elaborated by the Austrian Study Center for Peace and Conflict Resolution in Schlaining, in cooperation with African training institutes. This training course should be adopted and offered by relevant African training centres, the regional Economic Communities and the African Union for professionals with civilian, police and military backgrounds.

4. Human rights

The rule of law and transitional justice is firmly rooted in human rights law and standards. The right to an effective remedy for victims of human rights violations has to be ensured at all times. The Human Rights Council plays a crucial role in affirming the rule of law in conflict and post-conflict societies. Through its special procedures and independent experts the Council contributes to monitoring and reporting on the implementation of human rights obligations and rule of law principles on the ground. The Office of the United Nations High Commissioner for Human Rights has developed useful rule of law tools on transitional justice questions, which should be put to use in the work of the United Nations on the ground. In recent special sessions of the Council on Libya and Côte d'Ivoire, the Council unequivocally stressed the importance of accountability and the need to fight against impunity and the need to hold to account those responsible for attacks on civilians. The practice of establishing international commissions of inquiry for serious human rights violations needs to be taken into account and further studied.

5. Residual issues

An important role of transitional justice and accountability mechanisms in the future will be the preservation of their legacy and residual issues, such as supervision and enforcement of sentences, pardoning and early release, protection of witnesses, review of judgments and management and preservation of archives. Justice is not a one-time event when a tribunal is created, when a fugitive is arrested or when a sentence is rendered. Rather, it is a process that may last for years and decades.

As chair of the Security Council's Informal Working Group on International Tribunals in 2009 and 2010, Austria led the negotiations and facilitated the adoption of resolution 1966 (2010) on the establishment of the International Residual Mechanism for Criminal Tribunals, which was a milestone in the field of international criminal justice. The Council decided to establish the Residual Mechanism with two branches, one for the International Criminal Tribunal for Rwanda in Arusha and one for the International Tribunal for the Former Yugoslavia in The Hague, which shall commence functioning on 1 July 2012 and 1 July 2013, respectively. The establishment of the Mechanism sent a strong message of the Security Council against impunity: The high-level fugitives indicted by the two tribunals cannot hide out and escape justice. The jurisdiction, rights and obligations and essential functions of the tribunals will be continued by the Mechanism. At the same time, the resolution sent a clear signal to the tribunals to take all possible measures to expeditiously complete their work no later than 31 December 2014, prepare their closure and ensure a smooth transition to the Mechanism.

C. Informal mechanisms

A holistic and comprehensive approach to restoring the rule of law in post-conflict situations necessitates increased engagement with informal justice systems in order to improve accountability for perpetrators and access to justice for victims. Where formal accountability mechanisms cannot fully meet the goals of reconciliation and sustainable restoration of peace and security for conflict-torn societies, they can be effectively complemented by traditional dispute resolution mechanisms outside the scope of the formal justice system. Informal mechanisms are often more accessible and may have the potential to provide quick, cost-effective and culturally relevant remedies. They may operate closer to local constituencies and are not limited to dealing with only the most senior perpetrators. United Nations efforts should, while supporting the rule of law and improving the functioning of the formal justice institutions, recognize the potential of informal systems. Austria would like to commend the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme for their standard-setting activities in this regard, including the provision of technical assistance to national efforts in the justice and security sector.

However, informal justice systems are no universal remedy. Despite advantages, there are many situations where such systems fall short of achieving the goals of transitional justice and reconciliation. Informal justice systems are often discriminatory towards women and disadvantaged groups, do not always adhere to international human rights standards and sometimes perpetuate human rights abuses. They are susceptible to abuse of power and sometimes lack independence, and the skills and moral values of the individual operators influence the quality of justice. Therefore, United Nations initiatives should work towards enhancing the quality of dispute resolution and addressing the weaknesses faced by informal justice systems to ensure compliance with international human rights standards. Such initiatives should be part of the United Nations approach to transitional justice and the rule of law, with the broader goal of ensuring accountability and access to justice by working with both formal institutions and informal justice systems.

D. Capacity-building projects

Activities and projects for capacity-building and assistance to re-establish the rule of law in conflict and post-conflict societies are a main part of Austrian efforts to promote the rule of law. In addition, Austrian development cooperation programmes assist in transitional phases where disarmament, demobilization, reintegration of combatants, security system reform and the problems of vulnerable groups such as child soldiers need to be addressed.

The Austrian Development Cooperation (ADC), for example, supports the International Center for Transitional Justice in strengthening the debate on transitional justice in the former conflict region of northern Uganda. The project aims particularly at strengthening the dialogue between civil society and government institutions by integrating aspects of truth finding, reconciliation and memory into the dialogue and providing relevant institutions in the justice and law and order sectors with the necessary capacities to thoroughly deal with issues such as law enforcement, truth finding and repatriation. Special attention is given to the specific needs of women and other vulnerable groups in the context of Security Council resolution 1325 (2000).

In northern Uganda, ADC also supports the judiciary in the implementation of the peace, recovery and development plan by contributing to the establishment of relevant infrastructure (e.g., courthouses) and to activities in the area of transitional justice and formal and informal finding of justice.

In Bosnia and Herzegovina, ADC supports State institutions created by the Dayton Agreement in 1995 that deal with war crimes of the past. ADC, for example, promotes the Court of Bosnia and Herzegovina, established for the prosecution of war criminals and organized crime (see sect. A.1 above).

Although not in the context of a post-conflict situation, but with a view to preventing conflict, in a joint programme with the Swiss Development Cooperation, ADC will support Bhutanese efforts to achieve a sustainable and effective judicial system that is accessible, transparent, independent and efficient, ensuring the principles of non-discrimination and equality before the law. The support may include training, study visits or the funding of a permanent judicial training academy.

Czech Republic

[Original: English]

A. Participation in civilian missions

The Czech Republic regularly sends its police officers and legal experts on the rule of law and transitional justice to participate in civilian missions of the European Union, the United Nations and the Organization for Security and Cooperation in Europe (OSCE). For this purpose, the Police of the Czech Republic have an efficient system to train, equip and sustain their personnel abroad. The necessary resources are allocated from the State budget to ensure that the Czech Republic will fully

honour its commitments arising from international treaties and membership in international organizations.

Czech police officers take part mainly in operations that involve monitoring of the security situation, capacity-building, strengthening and support of local security forces and assistance in strengthening the rule of law. In this context, they have a broad range of assignments, including service as observers, liaison officers, advisers and instructors, as well as direct policing.

Czech police officers were deployed to their first missions — the United Nations Interim Mission in Kosovo (UNMIK) and the United Nations Mission in Bosnia and Herzegovina — in 1999. In 2003, the Czech Republic joined the European Union Police Mission in Bosnia and Herzegovina. From December 2003 to September 2005, the Czech police took part in the European Union Police Mission in the former Yugoslav Republic of Macedonia. In 2004, they started to work at the Jordan International Police Training Centre training Jordanian policemen. That project ended in 2006. Since 2005, the Czech Republic has been taking part in the European Union Integrated Rule of Law Mission for Iraq. Since 2006, Czech police have been included in the European Union Border Assistance Mission to Moldova and Ukraine. In 2007, they started to participate in four new missions: the United Nations Observer Mission in Georgia, whose mandate expired in 2009, the European Union Monitoring Mission in Georgia, the European Union Police Mission in Afghanistan[a] and the European Union Coordinating Office for Palestinian Police Support (EUPOL COPPS). Since 2004, Czech police have been taking part in the United Nations Mission in Liberia,[b] and currently there are plans to contribute the police officers to the United Nations Interim Force in Lebanon and other United Nations missions in the Middle East (the United Nations Disengagement Observer Force and the United Nations Truce Supervision Organization).

As of 1 April 2011, there were 35 Czech police officers involved in peace operations: 8 in Afghanistan (13 in total since 2008); 1 in Bosnia and Herzegovina (2 in total since 2003); 4 in Georgia (6 in total since 2008); 1 in Iraq (2 in total since 2005); 14 in the European Union Rule of Law Mission in Kosovo (30 in total since 2008, participation in UNMIK since 1999); 5 in Liberia (5 in total since 2004); 1 in EUPOL COPPS (3 in total since 2007); and 1 in the Joint Incident Prevention and Response Mechanism, Geneva (since 2010). The number of police officers serving abroad will be increased to 61 by the end of May 2011.

A Czech public prosecutor (economic crime expert) has been working in northern Kosovska Mitrovica under the European Union Rule of Law Mission in Kosovo since 1 October 2010. Furthermore, the Czech Republic actively supports OSCE field operations to promote democracy, human rights and the rule of law. For these purposes, it provides financial contributions as well as personnel (experts sent to OSCE missions in Bosnia and Herzegovina, Albania and Macedonia).

[a] The objective of the mission is to coordinate the Afghan and international efforts to ensure peace, security and safety for the Afghan people in a society based on the rule of law, good governance, human rights and sustainable economic and social development.

[b] The Czech Republic has contributed five police officers who rotate once a year. They work as training officers, sharing their experience with local applicants for police jobs and with the experienced policemen.

B. Seminars in the Czech Republic

In autumn 2010, the Provincial Reconstruction Team in Logar (Afghanistan) organized a 10-day study visit to the Czech Republic for senior officials from Logar province, including public prosecutors and members of the prison service, law enforcement and security structures. In December 2010, the Ministry of Justice organized a seminar for the Eastern Partnership countries on judicial reform, the fight against corruption and human rights protection. The seminar was co-funded by the European Commission. The Ministry of Justice plans to organize a similar seminar for western Balkans countries and Turkey in June 2011.

C. Provincial Reconstruction Team in Logar, Afghanistan

The Czech Provincial Reconstruction Team is a joint project of the Ministry of Foreign Affairs and the Ministry of Defense of the Czech Republic. It has been working in Logar since March 2008 under the International Security Assistance Force led by the North Atlantic Treaty Organization and established by the Security Council in resolution 1386 (2001). The Team consists of 11 civilian experts from the Ministry of Foreign Affairs and 261 Czech Army personnel.

The civilian component of the Team has implemented several capacity-building projects such as construction of a provincial prison facility, reconstruction of the provincial court building and construction of a training base for the Afghan National Police and the Afghan National Army. In addition, the Czech Republic contributes funds to the Law and Order Trust Fund for Afghanistan (LOFTA) established by UNDP.

The Team's military component has been providing training to the Afghan National Police since 2009. At first, the training took place on an ad hoc basis; however, today the Czech training teams are certified under the focused district development programme. The courses include basic instruction on the laws and regulations applicable to police work and on criminal and constitutional law. As suggested by the Team's military component, legal courses are taught by the local public prosecutors with experience in criminal law. Their involvement is a very successful innovation — the lessons have become more effective and the police find it easier to cooperate with public prosecutors after the course. The training team currently consists of the Czech military police officers and remains one of the main providers of training to the Afghan National Police in Logar.

In 2010, the Czech police deployed under the European Union Police Mission in different parts of Afghanistan were brought together at Forward Operating Base Shank in Logar. This concentration enables the European Union Police Mission to take part in the training provided to the Afghan National Police by the Provincial Reconstruction Team's military component, to offer mentoring to mid-level management of the Afghan National Police and to contribute to the building of the rule of law (the police team at the Shank base includes a rule of law expert). The police team at the Shank base receives logistical support from the Provincial Reconstruction Team's military component.

D. The Czech Republic in the International Security Assistance Force

Among the objectives of the International Security Assistance Force is to reduce the capability and will of the insurgency and support reconstruction and development, which shows that issues of rule of law and transitional justice are relevant to this operation. The Czech army units under command of the Force provide training to the Afghan National Police, which is currently their only task directly related to the rule of law.

The Force's rule of law programme is implemented by legal advisers and personnel of the military police of the United States Army's Task Force Spartan, which covers operations in Logar and Wardak. There has been informal cooperation between Task Force Spartan and the Czech Army's third contingent (the contingent, serving under ISAF command, included a rule of law expert) in respect of meetings with local judiciary, consultations on how to make the justice system more efficient and the training of local police.

E. Other activities

The Czech Republic takes an active part in European Union election observation missions, sending several dozen Czech election observers every year. Under its transition promotion programme, it supports projects of Czech non-profit organizations in post-conflict countries (Iraq, Georgia, Kosovo), e.g., in the fight against corruption, local government capacity-building and strengthening of civil society.

F. Lessons learned from the Czech Republic's activities in the field of the rule of law and transitional justice in conflict and post-conflict situations

An active involvement in potential risk areas is essential. The work done by experts in conflict areas helps to stabilize the security situation in the region, which eventually benefits the internal security of the Czech Republic (by reducing migration flows from the conflict region, increasing the capability of the local government to fight organized crime, etc.).

In the light of the experience gained in Afghanistan, the Czech Republic believes that one of the objectives in the field of rule of law and transitional justice in conflict and post-conflict situations should be to strengthen the links between the formal and informal justice systems and to enhance national ownership based on fundamental international standards.

The Czech Republic supports any measures to improve the sharing of information, experience and experts between the European Union missions (and agencies responsible for them), the agencies in charge of the internal security of the Union (such as the European Police Office) and the United Nations missions. Enhanced cooperation is one of the ways to increase the efficiency of the fight against organized crime, drug smuggling and terrorism.

Denmark

[Original: English]

The promotion of rule of law, access to justice and security are key objectives of Danish development cooperation.[a] A well-functioning justice system based on universal human rights is pursued as an objective in its own right. Denmark also believes that the rule of law has an instrumental value for achieving poverty alleviation and sustainable development as it promotes and protects people's social and economic rights, livelihoods and personal and property rights. A well-functioning justice system also enables everyone to claim their rights and to seek compensation (both against the State and against others) where their rights have been infringed. It contributes to peace and security by providing mechanisms to manage and solve conflicts and disputes and respond to grievances and it also offers a system to end impunity.

Against this background, Denmark supports long-term programmes of considerable size in most of its partner countries with the objective of improving access to justice and the rule of law. Recognizing that informal justice systems and dispute resolution mechanisms handle the majority of disputes in many of these countries, the programmes often address both formal and informal structures, institutions and processes as well as State and non-State actors. The programmes typically address one or several of the following elements: the development and implementation of sector- or institution-wide strategies and plans; constitutional or law reform; training of justice sector personnel; infrastructure development and modernization; legal and paralegal aid; civil society advocacy; alternative and informal dispute resolution mechanisms, including traditional and customary law systems, and their linkages with the formal justice system; and monitoring, documenting and reporting on the human rights situation by national human rights institutions and/or civil society organizations.

Countries in conflict or emerging from conflict face a number of specific justice and security challenges. Countries coming out of violent conflict need to address the past by initiating processes for reconciliation at national and community level as well as responding in different ways to war crimes, genocide, crimes against humanity and serious human rights violations. Processes to uncover and document "the truth", identify those responsible, reconcile opposed groupings and provide compensation for past violations (transitional justice) are complex and need an array of different response mechanisms. In some cases, specific legal conflicts and crimes also arise as a direct or indirect consequence of violent conflicts, such as increased rates of violent crimes within communities that have had their social fabric destroyed; disputes over land posing persons and communities that stayed behind against those that were displaced; and the transitioning of previous militarized groupings into organized crime and violence.

[a] The strategic framework for Danish support to rule of law is provided by the overall *Strategy for Denmark's Development Cooperation* (2010), in which freedom, democracy and human rights constitute one of five thematic priority pillars; *International Human Rights Cooperation — Strategy for the Government's Approach* (2009); and *Democratization and Human Rights — Strategic Priorities for Danish Support to Good Governance* (2009). The promotion of democratization, good governance and human rights, including the rule of law is, furthermore, identified as a priority in Denmark's Policy Towards Fragile States (2010).

These issues need to be addressed together with the often immense tasks related to renewed State-building processes and the need to ignite human and economic development. The re-establishment of national justice and security systems adhering to the principles of rule of law is an essential component of the State-building agenda.

Denmark supports several initiatives that address issues related to both transitional justice and the establishment and strengthening of national justice and security systems firmly anchored in principles of local ownership and sustainability.

Examples of such engagement are the support to the Juba peace process in northern Uganda, which had a strong focus on transitional justice with provisions for accountability and reconciliation followed up with the establishment of a war crimes division of the High Court; the International Commission against Impunity in Guatemala, addressing crimes committed by illegal security forces and clandestine security organizations; and conflict resolution mechanisms and access to justice at community level in Afghanistan, southern Sudan and Somalia, which will be strengthened in more encompassing new initiatives addressing needs at the community level and needs for capacity and institutional development of the justice and security sectors through support for the strengthening of border management, including coast guards and regional peacekeeping forces.

Denmark supports and advocates for the strengthening of the engagement and capacity of the United Nations to strengthen and support national reconciliation processes, transitional justice mechanisms and national justice and security systems. This is critical as the United Nations is often the first international player on the ground in a position to support the initial steps in often painful and difficult peace and State-building processes where the rule of law, human rights, access to justice and security need to take centre stage to ensure the framework for human and economic development.

Promoting domestic capacity to prosecute crimes under the jurisdiction of the International Criminal Court

Since the establishment of the International Criminal Court, Denmark has been a strong supporter in terms of political, economic and practical assistance.

As a focal point within the Assembly of Parties States, together with South Africa, Denmark has paid special attention to the topic of positive complementarity, i.e., cooperation aimed at enhancing the domestic capacity of (developing) countries to prosecute crimes that are under the jurisdiction of the Court, including genocide, war crimes and crimes against humanity.

With the Court only prosecuting the most responsible, it is essential to strengthen the domestic judicial systems of developing countries and thereby making them capable of investigating and prosecuting genocide, war crimes and crimes against humanity committed by individuals not prosecuted by the Court. Such an approach entails support to the strengthening of the judicial systems in general. If countries are able to prosecute these crimes themselves, potential International Criminal Court trials can be avoided. This link between international prosecution mechanisms and national legal systems is in Denmark's view of great importance and makes sense both from a political and economic perspective.

The work on positive complementarity has already generated much interest from States, international and regional organizations and civil society. The United Nations and the European Union, among others, are developing ways to operationalize complementarity in their own development work.

Finland

[Original: English]

Finland is deeply committed to strengthening the rule of law at both the national and international levels. Respect for international law and in particular for human rights is a prerequisite for international peace and security. Promotion of the rule of law is vital in conflict prevention as well as in conflict and post-conflict situations. Lack of national judicial capacity is not only a cause of conflict but also an impediment to its sustainable resolution. Likewise, the rule of law is an integral part of sustainable development. This is particularly true in post-conflict situations, where the need for justice is greatest, but the structures for its delivery may have collapsed or lost their legitimacy. The culture of rule of law with independent courts and a legal system securing equality before the law and accountability to the law, its functioning and reform are linked to a safe and secure environment and combating impunity; implementation of peace agreements; and peaceful mechanisms for dispute resolutions. Finland emphasizes the importance of the rule of law as a cross-cutting theme in addressing conflict and post-conflict situations and has actively participated in peacebuilding operations in the framework of the European Union and the United Nations in restoring the rule of law.

The International Criminal Court and other international criminal tribunals have an important role in upholding the international rule of law by combating impunity for the most serious international crimes. Among other things Finland stresses the importance of the universal ratification of the Rome Statute of the International Criminal Court and its full implementation as well as effective cooperation with the Court. The jurisdiction of the Court is based on complementarity. The States have the primary responsibility to nationally investigate and prosecute for the most serious international crimes. Efforts to strengthen the capacity of national legal systems in this regard have also contributed to strengthening the rule of law at the national level.

Also, we must not overlook traditional justice mechanisms which are equally relevant. But, justice must not only be retributive, it must also be restorative. For victims of a conflict or long-lasting social exclusion, it can be important to have an opportunity to tell their story from an equal footing with other members of the society, or to hear an official recognition of the wrongs committed. An element of the concept of rule of law is that victims' voices should be heard. If the victims do not sense that there is accountability to the law and fairness in application of the law, it will seriously harm their trust in rule of law.

Targeted sanctions raise questions concerning the guarantees of due process and the rule of law. Finland underlines the need to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them.

The United Nations is well placed to assist States in enhancing and strengthening their national rule of law capacity. In its own development cooperation, Finland aims at supporting national sector-wide strategies, wherever possible, and encourages the alignment of assistance behind national priorities. Assistance is particularly called for in conflict and post-conflict situations. Dialogue and participation of civil society in justice sector reforms are vital to the success of the process. Coordination and coherence of different United Nations actors, between the United Nations and the World Bank and with the various bilateral actors is essential. The United Nations Rule of Law Coordination and Resource Group supported by the Rule of Law Unit is a mechanism where roles and responsibilities of different United Nations entities and agencies can be usefully integrated and consolidated.

States and societies involved in conflict have the responsibility to resolve the relevant issues of transitional justice, including those of peace and justice. It should be clear that decisions need the support of the local population. Challenges include how to combine peace and justice in a balanced way. Human rights violations and international crimes such as genocide, war crimes and crimes against humanity cannot be forgotten in order to reach a peace. A commitment to human rights and accountability and a concrete road map should be included in all peace agreements. Promoting and supporting the rule of law in fragile States in order to facilitate State-building and institution-building processes is essential. The post-conflict situation is challenging for rule of law development as there are so many problems to address such as loss of material, institutions and human capacity, lack of an adequate legal framework, insecure environment, human rights violations and a culture of impunity, threats to judicial independence and impartiality, distrust in existing structures and root causes of conflict. Conflict situations also require reparations to the victims of conflicts. The participation of women has to be integral to all peace processes in accordance with 1325 (2000), and the subsequent resolutions 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010).

The rule of law is vital for the development of any given country. In fragile States it is crucial in order to support State-building and institution-building processes. Functioning rule of law is central for economic development as it ensures that there is a legal basis for economic activity and that laws and rules are in place to guide the role of authorities, preventing corruption and arbitrariness. The rule of law establishes the tools and means for democratic participation; it also provides mechanisms to complain about the functioning of authorities.

Finland promotes action against impunity by regularly supporting activities in this field. We are supporting the International Criminal Court and its different supporting organizations, for example the Coalition for the International Criminal Court. Finland is an important donor of the Court's Trust Fund for Victims. In addition, Finland gives financial support to other international tribunals such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia. Furthermore, Finland supports the work of the International Commission against Impunity in Guatemala as well as civil society organizations in their work against impunity.

Finland is of the view that capacity-building and assistance in the field of rule of law is an essential sector in development assistance, especially in societies recovering from conflict. The needs of the recipient countries should form the basis

for such assistance. Finland's yearly allocation of development cooperation funds in this sector is over 30 million euros.

Kenya

[Original: English]

A. Background

Armed conflict, be it international or internal, causes great suffering to the victims and society as a whole. It constitutes a situation where the rule of law is absent and human rights are no longer respected. Even though various preventive endeavours have been advocated and implemented by the international community, occurrences of armed conflict are still inevitable owing to political fluxes and fractions or disputes over power, which prove that preventive measures alone are not enough. This grave situation calls for the use of transitional justice to tackle the repercussions of armed conflict in post-conflict situations, which in the long run can enhance measures aimed at preventing the reoccurrence of armed conflict. However, the implementation of transitional justice in post-conflict situations has been problematic owing to various factors, most prominently, the preference of States to apply realpolitik and amnesty laws to perpetrators of gross human rights violations in order to gain political stability. Accountability for gross human rights violations remains a major factor in establishing justice and peace in post-conflict situations.

Conflicts are not a new phenomenon in Kenya. There was violence associated with the 1992 and 1997 elections. Most recently, the 2007/08 post-election violence left 1,133 people dead, 3,561 seriously injured and over 300,000 internally displaced according to the report of the Commission of Inquiry into Post-Election Violence (CIPEV).

Our experience in the past two decades has demonstrated clearly that the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice. At the same time, the heightened vulnerability of minorities, women, children, prisoners and detainees, displaced persons, refugees and others, which is evident in all conflict and post-conflict situations, brings an element of urgency to the imperative of restoring the rule of law.

While transitional justice refers to the set of activities and processes that can bring closure to the memory of past injustices and atrocities, constitutional change speaks to the need to create a new, democratic and human rights-responsive framework of governance. The two processes are now running concurrently as stipulated by agenda IV of the Agreement on the Principles of Partnership of the Coalition Government (popularly known as the National Accord), which brought an end to the post-election violence.

Agenda IV sets out a long-term national reconciliation and healing process that takes a deep look into the country's past. It also mandates the current coalition Government to enact a new, democratic Constitution before the next general

election, in addition to undertaking extensive reforms of State institutions, including security sector and criminal justice institutions.

To this end, under the current Constitution, there are reforms to ensure that institutions are strengthened so that the rule of law is upheld at all times. The reforms are mainly in the judiciary, the security sector, the office of the Attorney General and the office of the Director of Public Prosecutions, which are key to transitional justice and promotion and protection of the rule of law.

B. Kenya's progress

Truth, Justice and Reconciliation Commission

The Government established a Truth, Justice and Reconciliation Commission in July 2009 to spearhead a national process of truth-telling, healing and reconciliation. The Commission may turn out to be an important mechanism that can enable the country to change its human rights behaviour in a lasting way.

The Commission is in the process of gathering and collating views from people in different parts of the country on their experiences that have touched on human rights violations.

Judiciary

The existence of an independent judiciary is at the heart of a judicial system that guarantees human rights in full conformity with international standards. Indeed it is the obligation of every State to ensure that the judiciary is an independent arm of government.

Thus the institution itself and the judicial officers must be free to carry out professional duties without interference from any quarters whether external or internal. This independence must be protected in law and in practice.

To this end, Kenya, under the current constitutional dispensation, is undertaking key steps to reform the judiciary. First, there has been a reconstruction of the Judicial Service Commission under article 172 of the Constitution. The Judicial Service Commission is a body that facilitates the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice.

Second, there is an ongoing effort to appoint a new Chief Justice, who in the new scheme of things will also be the President of the Supreme Court, which is a new constitutional creation as provided for in article 163 of the Constitution. Indeed, the urgency of change in the judiciary is exemplified by the fact that the Constitution provides, in schedule 6, that the Chief Justice shall be the first top-ranking government official to leave office six months after its promulgation. This has since been done. There is also the creation of the office of the Deputy Chief Justice.

Third, the recently enacted Vetting of Judges and Magistrates Act, Act No. 2 of 2011, whose objective is to establish mechanisms and procedures for the vetting of judges and magistrates pursuant to section 23 of schedule 6 of the Constitution. The process of vetting judicial officers is aimed at strengthening the judiciary by

assessing the integrity of the judges in order to determine their suitability for positions in the judiciary.

Fourth, the Judicial Service Act, Act No. 1 of 2011, gives the judiciary the financial autonomy required for effective management of its matters and programmes, the disciplining and removal of judicial officers and the establishment of the National Council on Administration of Justice charged with formulating policies relating to administration of justice.

There is also expansion of the courts. The new Milimani courts complex in Nairobi was a major development in the physical expansion. The new courts provide for automation to expedite judicial processes and guarantee justice to the citizens.

The security sector

Experiences from post-conflict and transitional societies such as Sierra Leone and South Africa show that improving security and governance helps create peace and other suitable conditions for meaningful social reconstruction and development to take place.

The post-election crisis vividly exposed the grave shortcomings of the Kenya security sector, whose image was badly tarnished by the illegal and unjustifiable actions of some of its members. According to CIPEV, most elements in the security sector threw away all pretence at professionalism during the crisis. The Government then set up the National Task Force on Police Reforms with the main aim of looking into reforms in the police.

From the recommendations of the Task Force and CIPEV, and in line with the Constitution, the Government will table five bills in Parliament to reform the police force: the independent police oversight bill, the police reforms bill, the national coroners services bill, the Police Service Commission bill and the private security providers bill.

The Kenya police recruitment is also in line with the police reforms. The Regular & Administration police recruits will train together under a newly reviewed training programme. The training period has also been extended from six (6) to nine (9) months as per the reviewed training programme.

Office of the Director of Public Prosecutions

The office of the Director of Public Prosecutions is established under article 157 of the Constitution. Unlike in the old constitutional dispensation, where it was part of the office of the Attorney General, the new dispensation makes it an autonomous body to institute and undertake criminal proceedings against persons before any court. This office is key in the promotion of the rule of law.

Further, the Witness Protection Agency has been established under this office to offer special security to those giving evidence in court. It was established under section 3A of the Witness Protection Act of 2006 (as amended in 2010) to respond to the difficulties the country had experienced in investigating and prosecuting those involved in the 2007/08 post-election violence and other crimes. The launch was a landmark in the criminal justice system not only in Kenya but in Africa, Kenya being the second country, after South Africa, to establish such a programme.

Informal justice systems

Traditional and informal dispute resolution mechanisms provide a valuable means of addressing disputes of the kind that have often given rise to conflict in Kenya in the past. Violence has tended to flare up in regions where misunderstanding and conflicts arose over the allocation and use of land and natural resources such as pasture and water by different ethnic communities.

Traditional and informal dispute mechanisms can help diffuse tensions early and bring opposing sides to the same table, thus providing an alternative to violence and force. They may also provide a forum that is more financially accessible and to which the parties feel greater affinity than formal legal processes.

The current Constitution is amenable to traditional and informal dispute mechanisms while ensuring that their use is compliant with justice and the Bill of Rights. Article 159 (2) (c) of the Constitution provides that, as a guiding principle in exercising judicial authority, "alternative forms of dispute resolution including ... traditional dispute resolution mechanisms shall be promoted". Additionally, article 67 on the National Land Commission mandates that body to encourage the application of traditional land dispute mechanisms in land conflicts. While these are early days, the availability and recognition of these mechanisms is a promising development.

International transitional justice

The field of transitional justice has expanded over the years and is no longer restricted to national transitional justice mechanisms. It is generally accepted that all States have an obligation to take reasonable steps to prevent human rights violations; to conduct a serious investigation of violations when they occur; to impose suitable sanctions on those responsible for the violations; and to ensure reparation for the victims of the violations.

Those principles have been explicitly affirmed by decisions of various courts and endorsed in decisions by the European Court of Human Rights and by United Nations treaty bodies such as the Human Rights Committee. The 1998 creation of the International Criminal Court was also significant, as the Court's stature enshrines State obligations of vital importance to the fight against impunity and respect for victims' rights.

Kenya passed the International Crimes Act, which domesticates the Rome Statute of the International Criminal Court. Further, article 2 (5) of the Kenyan Constitution provides that customary international law shall form part of the laws of Kenya. This means that crimes such as genocide, war crimes and crimes against humanity are automatically crimes under Kenyan law.

Kenya therefore appreciates the fact that international transitional justice is necessary to complement the national mechanisms that are in place.

C. Conclusion

Kenya has made commendable efforts in establishing the constitutional, legislative and institutional framework that would secure justice and peace in post-conflict situations. We are now in the process of passing legislation, establishing

institutions and making appointments which are key to transitional justice and the promotion and protection of the rule of law.

New Zealand

[Original: English]

As a long-standing supporter of international law and the rule of law, New Zealand remains committed to strengthening the rule of law both nationally and internationally, and was one of the first countries to pass legislation that creates an obligation on lawyers to "uphold the rule of law". New Zealand views the rule of law as playing a crucial role in the area of transitional justice within both conflict and post-conflict situations.

New Zealand therefore welcomes the discussions on these issues in the Sixth Committee and would like to offer the following comments, which relate to New Zealand's experiences in the historical Treaty of Waitangi settlements process. Of particular interest is the role of the Waitangi Tribunal, which has a pivotal part to play in facilitating redress for historic Treaty breaches. The Tribunal's jurisdiction is unique within New Zealand and globally has no close parallel.

A. Background to Waitangi Tribunal

New Zealand's Treaty of Waitangi, signed in 1840 between Māori, New Zealand's indigenous peoples, and the Crown, is regarded as one of the founding documents of New Zealand's constitutional arrangements. The Treaty provides a framework for the relationship between Crown and Māori.

Consistent with constitutional principles, however, the Treaty of Waitangi binds the Crown only to the extent that it is enacted in legislation. Māori who wished to complain about breaches of the Treaty therefore had few avenues for redress, until the establishment of the Waitangi Tribunal in 1975.

In the Treaty of Waitangi Act 1975, New Zealand's Parliament established the Waitangi Tribunal to provide a legal process by which Māori Treaty claims could be investigated. The Tribunal's establishment was a response to the rise in Māori protest in the 1960s and 1970s over instances where the Treaty of Waitangi had not been observed.

The Tribunal's inquiry process contributes to the resolution of historical Treaty claims, and in that way, to the reconciliation of outstanding issues between Māori and the Crown. It also looks into contemporary Treaty claims. Claims may be made only against the Crown, as a party to the Treaty.

B. Role of the Waitangi Tribunal in the Treaty settlement process

The Waitangi Tribunal plays an important part in the wider Treaty settlement process between Māori and the Crown. Claimants can choose to either enter into direct negotiations with the Crown (the Office of Treaty Settlements is the agency of the Crown responsible for negotiating settlements between Māori and the Crown), or have their claims heard by the Tribunal before entering into negotiations.

Generally, a claimant group who wishes to enter into direct negotiations with the Crown must cease actively pursuing their claim or claims before the Tribunal, although exceptions do apply (where, for example, a completed report is important to the historical record). Treaty settlements, once agreed, are implemented through legislation passed by Parliament.

The Tribunal functions not as an adversarial court but as a commission of inquiry that makes findings on whether a claim is well founded, and outlines if and how the principles of the Treaty have been breached. These findings are published in an official report to New Zealand's Minister of Māori Affairs. The Tribunal may make practical recommendations to the Government of New Zealand about what could be done to compensate the claimant (or claimants) or to remove the harm or prejudice that they suffered. While its recommendations are not, except in certain cases, binding, the Crown will consider the Tribunal's recommendations. To this end an annual report is prepared by the Minister of Māori Affairs that considers the Crown's progress in implementing the Tribunal's recommendations. Importantly, the Tribunal can make binding recommendations in relation to certain commercially valuable assets owned by the Crown (such as forests and properties of State-owned entities). The Crown and tribal groups have, however, generally agreed on redress over such assets, avoiding the need for further litigation.

The Tribunal aims to add value to the settlement of claims by conducting a robust inquiry and identifying all parties and their representatives in order to clarify key issues, resolve points of contention where possible and deliver parties ready to negotiate a settlement. The hearings process also allows claimants the chance to tell their story and air their grievances in a way that is incorporated into the official record. The process can therefore also be considered as helping claimants to move from a "grievance" to a "settlement" mindset.

C. Substance of claims before the Waitangi Tribunal

The Tribunal can examine any claim by Māori individuals or groups who may have been prejudiced by laws and regulations or by acts, omissions, policies or practices of the Crown since 1840 that are inconsistent with the principles of the Treaty of Waitangi.

Claims can be historical (for instance, where people claim compensation for historical land) or contemporary (for instance, where claimants say a current Government policy, action or inaction is in breach of Treaty principles). Contemporary claims are those that have arisen since 1992. While historical claims were able to be filed from 1985, since 2006, claims based on historic injustices were required to be lodged with the Tribunal by 1 September 2008. This is because claims can overlap geographically and it is important that the Tribunal be advised of all claims when undertaking investigations (as well as for the Crown to have this information when negotiating settlements).

Filed claims are aggregated by the Tribunal into different hearings so that claims that raise similar concerns can be heard at the same time. For example, claims may be "district" (e.g. relating to a particular land block or locality) or "generic" (dealing with matters of national significance, such as immigration policy).

D. Rule of law principles and the Waitangi Tribunal

A number of principles central to the rule of law are espoused in the workings of the Tribunal, the upholding of which is essential to the Tribunal maintaining its legitimacy and role in a meaningful settlement process.

The creation of a specialist Tribunal, with retrospective jurisdiction, reflects the Crown's acknowledgement of the need to establish a properly enacted, non-arbitrary and principled approach to inquiring into the merits of Māori claims of historical breaches of the Treaty by the Crown.

Separation of powers. The Tribunal is a specialist tribunal that is independent of the Executive. Its independence enhances its legitimacy by enabling an impartial and credible process for examining Māori claims. New Zealand's Ministry of Justice is charged with providing support and other services necessary to enable the Tribunal to carry out its work (through the Waitangi Tribunal Unit). The Tribunal also has jurisdiction (which the New Zealand courts do not have) to review settlement agreements between the Crown and Māori, and to review legislation to ensure consistency with the principles of the Treaty of Waitangi.

Participation in decision-making. The membership of the Tribunal reflects the principle of partnership inherent in the Treaty of Waitangi through representation of Māori and non-Māori. The claimants and the Crown are given the opportunity to be heard, consistent with principles of natural justice.

Transparency of decision-making. The Tribunal aims to conduct inquiries through public and transparent processes. Tribunal hearings are open to the public so that anyone can attend. Public notices of all Tribunal hearings are published in local and regional newspapers. Members of the public may in most cases access the register of claims and documents entered on the record of inquiry of each claim. Ultimately, the Tribunal's findings are published in official reports to the Minister of Māori Affairs that are publicly available on the Tribunal's website.

Procedural transparency and certainty. The Tribunal's processes are published in its "Guide to the practice and procedure of the Waitangi Tribunal". If circumstances require (and would serve the process), the Tribunal may vary the specific procedures or practices outlined in the Guide.

E. The Tribunal as a bicultural body

Given that the Tribunal aims to reconcile grievances between Māori and the Crown, taking a bicultural approach to its operations is important to its legitimacy. Accordingly, the Tribunal comprises both Māori and non-Māori members, with at least one Māori member required to be present at every sitting of the Tribunal. Where practical, the Tribunal will hear Māori evidence and submissions according to Māori protocols. Giving evidence in te reo (Māori language) is common and encouraged by the Tribunal with a live translation service available. Submissions may also be given in te reo.

Being a permanent commission of inquiry rather than a court of law also gives the Tribunal relative flexibility. Its processes are more inquisitorial than adversarial, and in particular, the Tribunal can conduct its own research. The Tribunal often holds hearings on a marae (communal place), but also in public halls, schools,

courtrooms or conference rooms. Both technical evidence and tangata whenua (customary) evidence is heard by the Tribunal. The Tribunal's processes are also tailored to focus on collective or tribal rights and interests.

Oman

[Original: Arabic]

The Government of Oman would like to express its thanks and appreciation for the efforts made by the United Nations, and all of the committees, to instil the principle of the rule of law at the national and international levels. The Government would like to take this opportunity to affirm that the rule of law is one of its top priorities at the national level. This principle is an essential cornerstone of the legislation currently in force, and guides the authorities responsible for applying the law and the judicial authorities responsible for prosecuting offenders. At the international level, Oman, just as all other countries in the world, strives to make the rule of law one of the principles that govern its relations with other States and with regional and international organizations. It should be noted that Oman considers international instruments, which are the primary source of international law, as having the force of law once they have been ratified by His Highness the Sultan, in accordance with Constitutional requirements (article 75 of the Basic Law of the State). Should Omani law conflict with a duly ratified international instrument, the latter has priority, making such instruments subordinate only to the Basic Law.

Oman agrees with those countries that call for universal adherence to the rule of law and for its application at the international and national levels, whether in time of conflict or in post-conflict situations, because that is indispensable to achieving the noble goals to which the international community aspires, including stability, which lays the ground for economic growth, sustainable development, combating crime, eradicating poverty, hunger and disease and diminishing the effects thereof, and mitigating the impact of wars and armed conflicts. Oman believes that, in order for there to be justice for all, everyone must be equal before the law. It further believes it is essential that the rule of law not be used as an instrument of political blackmail because such use would surely bring about results that are contrary to the rule of law.

Qatar

[Original: Arabic]

Qatar strives to foster the rule of law at the national and international level, both in the context of the United Nations and through bilateral or multilateral cooperation with Member States.

The principle of the rule of law is affirmed in the Constitution and criminal laws of Qatar; it is also applied by the competent courts. In that connection, we would like to draw attention to the following.

Articles of the Constitution that affirm the principle of the rule of law

Article 129 states that the rule of law is the basis of government in the State. The integrity of the judiciary and the impartiality and fairness of judges shall serve to guarantee rights and freedoms.

Article 6 states that the State shall abide by international charters and conventions, and strive to implement all international treaties, charters and conventions to which it is party.

Article 34 states that citizens shall be equal in public rights and duties.

Article 35 states that all persons are equal before the law. There shall be no discrimination on the basis of sex, race, language or religion.

Article 36 states that personal freedom shall be guaranteed. No person may be arrested, detained or searched, nor may his freedom of residence and mobility be restricted, other than in accordance with the law. No person may be subjected to torture or degrading treatment. Torture shall be considered a crime punishable by law.

Article 39 states that an accused person is presumed innocent until convicted by a court, following a trial wherein the person's right to present a defence was duly observed.

Article 40 states that all offences and penalties shall be defined by the law and all penalties shall be applied in accordance therewith. The offender alone shall be penalized for his acts.

The Penal Code

In implementation of article 40 of the Permanent Constitution of Qatar, the Penal Code defines and categorizes offences and sets out appropriate penalties.

Code of Criminal Procedure

The Code of Criminal Procedure sets out well-defined procedures for criminal trials that guarantee the rights of the accused and afford him access to every means of defence. Under the Code of Criminal Procedure, the court system is divided into three levels: the courts of first instance, the courts of appeal and the court of cassation.

The Code of Criminal Procedure devotes great attention to the question of penalties. Article 323 of the Code provides that no penalty or measure prescribed by law for any crime may be carried out in the absence of a judgement issued by a competent court.

International judicial cooperation

The Code of Criminal Procedure, in article 407, provides that, without prejudice to international instruments that are in force in Qatar, and on condition of reciprocity, the Qatari judicial authorities shall cooperate in respect of criminal matters with foreign and international legal authorities, in accordance with the provisions of the Code.

Slovenia

[Original: English]

Slovenia strongly supports the United Nations debate and activities relating to the rule of law, particularly the work of the Rule of Law Coordination and Resource Group and the Rule of Law Unit. Respect for the rule of law is the basis for the activities of Slovenia, both in its national and international affairs. Slovenia previously submitted a report on the rule of law, which was included in the report of the Secretary-General (A/65/318).

This response therefore focuses on the significance of the rule of law in societies devastated by conflict and transitional justice. The establishment of the rule of law in the activities of countries in post-conflict situations is essential for ensuring future peaceful co-existence in the conflict-affected societies. It is important to ensure fair and unbiased judicial proceedings and establish responsibility for past grave violations of human rights, as only justice will bring long-lasting peace. Slovenia, as a State party to the Rome Statute, actively supports the work of the International Criminal Court, which is one of the most important international instruments for the prosecution of the most serious crimes, and calls upon all States to cooperate fully with the Court. The work carried out by the International Criminal Court and other international criminal tribunals (in the Former Yugoslavia and Rwanda, etc.) proves that the international community will not tolerate impunity for grave violations of international humanitarian law. Slovenia regularly makes financial contributions to the tribunals, as well as additional voluntary contributions (e.g. to the Special Court for Sierra Leone). Slovenia pays particular attention to the victims of international crimes and is among the 10 largest donors to the International Criminal Court Trust Fund for Victims with a total contribution of 51,500 euros.

Slovenia is convinced that the rule of law at all levels of governmental institutions' activities, and effective control by non-governmental organizations, must be ensured. Transparent and unbiased functioning of public administration is the basis for the effective development of individual societies.

Slovenia is of the opinion that the international community is obliged to provide assistance to conflict-affected societies in accordance with their needs and requests. Slovenia strongly supports the efforts of international organizations in implementing programmes of assistance for conflict-affected societies, which represents an important step forward on the path to a better world in the future. Furthermore, Slovenia supports the activities of non-governmental organizations, within which many individuals diligently provide assistance to affected societies at all levels of post-conflict recovery. Slovenia is also striving to provide active assistance by means of its European Union membership and direct bilateral assistance to affected countries.

Slovenia is making a special effort to provide assistance to the neighbourly western Balkan countries in the field of justice and home affairs.

Within the framework of the three-year European Union project on European Union criminal justice instruments in practice, the Justice Education Centre at the Ministry of Justice of Slovenia cooperated with the Croatian Academy of Justice. Twenty-seven Croatian judges and prosecutors attended several seminars taking

place in Slovenia, and two workshops on Eurojust and the European Judicial Network, were organized in Rijeka and Zagreb by the Justice Education Centre of Slovenia. Based on the Instrument for Pre-Accession Assistance regional project for intellectual property rights protection in the western Balkans, the Centre also organized education for Macedonian judges in cooperation with the European Patent Office. The Ministry of Justice of Slovenia and the Republic of Macedonia have concluded a memorandum on cooperation, which includes justice education. The "Brdo Process", a Slovenian initiative, was launched in March 2010 with the aim, among others, of enhancing judicial cooperation in criminal matters among the western Balkan States.

The Ministry of the Interior of Slovenia is striving for the transfer of the standards of the European Union and the Schengen Area in the fields of migration and the fight against organized crime and terrorism to the western Balkan countries by implementing projects of close inter-institutional cooperation and bilateral technical assistance programmes. As the western Balkan countries are already part of the European Union integration process, they need to be ensured professional technical assistance and the transfer of know-how and experience. Following the successful conclusion of the visa liberalization process for the western Balkan countries, the Ministry of the Interior and the European Commission have already started activities for continuing reforms in internal affairs in the western Balkan countries within the "Brdo Process". The countries will thus be supplied with clear instructions regarding necessary reforms, which will enable each country to reach a higher level of harmonization of its national legislation with European Union legislation prior to beginning European Union membership negotiations. Assessment missions, which will include experts from the Ministry and the Slovenian Police, are to be held twice per year; the first missions are expected to take place at the end of 2011.

Slovenia also supports the work of institutions providing assistance to conflict-affected societies in the broader sense of establishing the rule of law, particularly through education and ensuring a secure and peaceful living environment.

The Government of Slovenia, the non-governmental organization Slovene Philanthropy and the Municipality of Ljubljana established the Foundation "Together" — Regional Centre for Psychosocial Well-being of Children in 2002, with the aim of protecting and improving the psychosocial well-being of children in areas affected by war, armed conflict, terrorist attack, natural disaster or technical accidents. The mission of the Foundation is to provide children with a better future and contribute to peace and stability in the region and beyond. To this end, the Foundation mobilizes Slovenian and international expertise and material resources. The programmes it is executing are becoming a recognizable and a sought-after form of development assistance. The Foundation is carrying out programmes in the regions of South-Eastern Europe, Iraq, Afghanistan, Palestine and North Caucasus. Numerous international conferences, consultations and international camps for volunteers have been organized. The Foundation participates in international conferences and consultations with professional articles and contributions. It publishes in professional publications and issues informational publications, which have been translated into foreign languages.

It is now exactly 13 years since the Government of Slovenia, in March 1998, decided to establish the International Trust Fund for Demining and Mine Victims

Assistance in Bosnia and Herzegovina. Its main goal was to assist with implementing the Dayton Agreement by raising funds, providing services and managing mine action projects. In the course of time, the Fund has extended its activities to other mine-affected countries in the western Balkans and contributed to the successful completion of landmine clearance in Macedonia, Montenegro, Albania and Serbia. Major mine action projects in the region are still being implemented in Bosnia and Herzegovina and Croatia. In this context, we would like to point out that regional cooperation in the western Balkans, as promoted and facilitated by the International Trust Fund, has proved to be an important confidence-building measure among the concerned countries. The International Trust Fund has become a centre of excellence for regional cooperation in mine action. Good results in the countries of the region provided encouragement for further engagement in other parts of the world. While the Balkans remains the focus of its work, the International Trust Fund is also carrying out its mine action projects in other regions, including the South Caucasus, Central Asia and the Middle East. Since its inception in 1998, it has organized the demining of over 100 million square metres of land, facilitated the treatment of more than 1,000 mine survivors and supported the development of national and local rehabilitation capacities in 12 mine-affected countries. Of course, none of this would have been possible without the generous assistance of the international donor community. Since 1998, donors have contributed more than $330 million. The United States Government, as the biggest donor, has contributed more than $141 million, and the Government of Slovenia more than $7.7 million.

There is one particular point that Slovenia would like to draw attention to. In many situations, the international community provides post-conflict recovery assistance in the field of the rule of law by helping to set up a new legal system. In this context, international experts come into the country with the aim of facilitating the rebuilding of a society, but often the laws that these international experts implant are based on models that are completely disconnected from the social, cultural and economic structure of the respective State and especially its needs. The laws, in such cases, are not socially integrated and are given to the society without real understanding as to how they should be implemented. While it may be a good short-term solution in some cases, in the long term this approach usually creates problems because the new laws are not sufficiently understood and are disconnected from the social context in which they are supposed to be implemented. In addition, the people's ability and competence to identify and legislatively solve problems in their society may be postponed to a future time, when the international community leaves and the country is left to its own means and devices.

Slovenia will, in accordance with its capacities, continue contributing to the efforts of the international community to assist affected societies in post-conflict recovery, particularly in establishing the rule of law.

Sweden

[Original: English]

Serious abuses are often committed against the civilian population during armed conflicts. In some cases these are so serious that they are characterized as genocide, crimes against humanity or war crimes, which means that the perpetrators

cannot be granted an amnesty and that the International Criminal Court can intervene to dispense justice when national courts are unable or unwilling to do so. Most perpetrators who have been guilty of abuses are not, however, dealt with by the International Criminal Court. They often escape all forms of punishment. This is not infrequently due to a lack of political will. The reasons might also be that the national system of justice is not independent or that it is otherwise unable to initiate legal proceedings and bring suspected perpetrators before the court. It can also be that the perpetrators are granted amnesty.

It is not uncommon that decisions have to be taken which, in the short term, can be seen as promoting peace over justice. The issue of amnesty is one such example. Without an amnesty there might be no peace agreement. At the same time, it can also be argued that justice for the victims is important for a sustainable peace. It is beyond all doubt that the impunity that so often prevails during and after armed conflict has to cease for a society to be able to develop in a sustainable democratic direction.

In conflict and post-conflict situations, Sweden will promote justice. The choice must never be between peace and justice — only solutions that satisfy both interests are compatible with Swedish policy. The choices that have to be made are rather a choice of method (national legislation, international legislations, hybrids of these, etc.) and a choice of timing. Sweden will:

- Work to ensure that perpetrators of serious crimes during the conflict be brought to justice and punished. If this cannot be done immediately after a peace settlement without peace being seriously threatened, it must be prioritized as soon as peace has become more sustainable.
- Advocate for the affected State itself to be given the opportunity to shoulder its responsibility for bringing justice to victims for crimes committed during conflict, for establishing viable and appropriate systems of transitional justice and, in both cases, for this to be done in full conformity with international standards and in accordance with the complementary system upon which the International Criminal Court is founded. Domestic justice should be the first resort in pursuit of accountability. Only when the domestic criminal justice system fails to hold perpetrators accountable — either because the system is unable or the local authorities are unwilling — should the international community step in.
- Promote strong international support for the establishment and strengthening of national justice systems, for instance through the instalment of transitional justice mechanisms and permanent justice mechanisms capable of preventing the society from falling back into conflict. Here, domestic civil society organizations have an important role to play.

Swedish development policy

Sweden has in recent years given greater attention to the relationship between development issues and conflict management, peacebuilding and rule of law issues. War and armed conflict are among the greatest obstacles to development and poverty reduction. The overarching objective of the support provided in the context of security and development in Sweden's international development cooperation is therefore to contribute to a lasting peace that makes development possible. The

Government of Sweden has recently adopted the policy "Peace and security for development", clarifying the Government's ambitions in development cooperation for the years 2010-2014 in conflict and post-conflict situations. The policy applies to initiatives at all levels: bilateral, regional and global. It also guides Swedish action in multilateral forums. Three focus areas are designated for priority action: (a) peace promotion (including rule of law institutions notably in transitional justice), (b) security promotion and (c) peace dividends.

The policy highlights the significance of both peacebuilding and State-building and identifies the special challenges facing development cooperation in conflict and post-conflict countries. After a conflict there is often a need, but also an opportunity, to contribute to strengthening the national justice system. In such a situation, it is particularly important to contribute to the establishment of a justice system that counteracts impunity for serious crimes. In doing so, a foundation is also laid for a functioning system, based on the rule of law, in the longer term.

For communities where extensive abuses have been committed, it is important to establish situation-adapted mechanisms within existing international and national judicial frameworks for accountability which have broad legitimacy among those principally affected by the violations. Such mechanisms often include a reconciliation and confidence-building component. These mechanisms have come to be known as "transitional justice" in international contexts.

Rule of law actors: the Swedish International Development Cooperation Agency and the Folke Bernadotte Academy

The main actor in Swedish development cooperation in the field of rule of law is the Swedish International Development Cooperation Agency (SIDA), a Government agency under the Ministry of Foreign Affairs. The Folke Bernadotte Academy is another Government agency under the Ministry of Foreign Affairs that works towards improving coordination and coherence of technical assistance and capacity-building through policy development, research, training and implementation of projects in the field.

Since 2006, rule of law in public administration has been a high-profile research and policy area of the rule of law programme at the Folke Bernadotte Academy. In 2008, the Academy published the report entitled "Rule of law in public administration: problems and ways ahead in peacebuilding and development". Building upon field studies and a series of consultations with international actors, the report notes that public sector reform is rarely approached from a rule of law perspective in peacebuilding and crisis management. This adversely affects reconstruction efforts and individuals and vulnerable groups relying on the administration to abide by the laws and provide equal access to services in a transparent way with a minimum level of legal certainty. Improving rule of law in the public sector serves to protect the rights of individuals, facilitate reconstruction, stabilization and transition and increase the effectiveness of international aid and assistance. Interlinked with rule of law in public administration, the Folke Bernadotte Academy has also initiated research on new constitutions in crisis societies, with a particular emphasis on control over the security forces.

Swedish engagement in transitional justice and rule of law initiatives

Sweden supports a wide range of transitional justice and rule of law actors. The International Center for Transitional Justice is a leading non-governmental international organization in the policy area of transitional justice. The Centre works in societies emerging from repressive rule or armed conflict, as well as in other societies where legacies of abuse remain unresolved. The Ministry of Foreign Affairs of Sweden has contributed to the Centre with core support since its inception.

SIDA has supported transitional justice processes in many countries, such as Guatemala, El Salvador, Peru, Colombia, South Africa, Rwanda, the Democratic Republic of the Congo, Liberia, Timor-Leste and Bosnia and Herzegovina. This support has included a range of initiatives, such as support to truth commissions, civil society activities within transitional justice, justice mechanisms including traditional customary law, etc.[a] Swedish expertise has also been seconded to Truth commissions and Tribunals, for example in South Africa.

Additionally, Sweden participates in rule of law missions and operations of the European Union under the Common Security and Defence Policy (CSDP), including the European Union Police Mission in Afghanistan, which provides training to the Afghan National Police with the objective of contributing to the establishment of sustainable and effective policing arrangements; the European Union Integrated Rule of Law Mission for Iraq, which supports the Iraqi criminal justice system by providing training for high and mid-level officials in senior management and criminal investigation; and the European Union Rule of Law Mission in Kosovo, which monitors, mentors and advises the Kosovo authorities in the area of rule of law, specifically police, judiciary and customs. Swedish judges, police officers, political advisers and legal experts participate in the above-mentioned missions.

Lessons learned: the role and future of national and international transitional justice

There is no individual model for rule of law and transitional justice initiatives in conflict and post-conflict societies. The United Nations has recognized that pre-packaged solutions are ill-advised. Approaches have to be determined and tailored to the specific conflict and crimes being addressed, considering the national context and informed by national consultations carried out with civil society and victims. Experiences from other countries can be used as a starting point for national debate and decision-making. Nonetheless, experience has shown that the following general aspects should be taken into consideration when devising national and international transitional justice processes.

(a) National leadership and ownership of a transitional justice mechanism is paramount. Any perceptions of domination or control by the international community can undermine public acceptance of the work of the commission, and affect its legacy;

[a] For a comprehensive overview of SIDA aid in conflict and post-conflict situations, see the Swedish Agency for Development Evaluation (SADEV), *Sidas insatsberedning och uppföljning av stöd till rättsskipning i samband med försoningsprocesser*, available at www.sadev.se/Documents/Publikationer%202010/SADEV%20Report%202010_1.pdf.

(b) Emphasis should be given to national capacity development. Transitional justice is an important national process and given the weak human resources in many countries following a conflict, efforts should be made to recruit locally;

(c) Reconciliation is fostered by national efforts to ensure the rule of law and good governance in contrast to a past marked by human rights violations and poor governance. Reconciliation without efforts to change people's material conditions is inadequate;

(d) An inclusive and participatory approach is important. Approaches focusing only on one or another institution, or ignoring civil society or victims, will not be effective. The most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out. Local consultation enables a better understanding of the dynamics of past conflict, patterns of discrimination and types of victims;

(e) Transitional justice is an expensive process. There cannot be half-measures. Sufficient resources should be allocated to seeing initiatives through, particularly as they contribute to the consolidation of peace in the country.

Switzerland

[Original: English]

Strengthening the linkage between the rule of law and transitional justice in the area of peace promotion and human security has been a major focus of Swiss foreign policy in recent years. Switzerland welcomed the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616) when it appeared in 2004.

Since then, Switzerland has engaged in a number of initiatives to strengthen the normative framework of transitional justice at the multilateral level and to develop capacity and expertise in specific areas of transitional justice at the national and regional levels.

There are two main issues that Switzerland would like to raise as a matter of priority, namely, the need for a consolidated approach at the multilateral level and the need to develop implementation strategies for the existing norms and standards in this field.

Although the "principles on reparation", developed by Theo Van Boven, have been approved by the General Assembly,[a] the Joinet/Ohrentlicher principles should also be approved by the Assembly in order to strengthen a common approach.

In the following comments, Switzerland presents a brief overview of its conceptual approach and of its own activities in this regard. The report concludes with a critical reflection on some of the current challenges in the field.

[a] See General Assembly resolution 60/147 and the reports submitted by Theo Van Boven (E/CN.4/Sub.2/1993/8; E/CN.4/Sub.2/1996/17; E/CN.4/1997/104) and Cherif Bassiouni (E/CN.4/2000/62) on reparations.

A. The principles against impunity as a framework for dealing with the past[b]

Although there is no standard model for dealing with the past, progress has been made in recent years through the work of Special Rapporteurs and experts of the United Nations on the issues of reparations, impunity and best practices in transitional justice.[c]

The report on the rule of law and transitional justice issued by the Secretary-General in August 2004 marked a watershed in this development. In that document, the Secretary-General argues that effective transitional justice strategies must be both comprehensive in scope and inclusive in character, engaging all relevant actors, both State agencies and non-governmental organizations, in the development of a "single nationally owned and led strategic plan".[d] The report further emphasizes that the operational definition of transitional justice itself should be broadened to include "judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof".[e]

More recently, specific elements of these standards have been further developed. In December 2005, the General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (resolution 60/147, annex). Significantly, this document outlines the obligations of States with respect to gross violations of international human rights and humanitarian law and defines the term "victim". One year later, the Assembly approved the Convention for the Protection of All Persons from Enforced Disappearance (resolution 61/177, annex), which specifies the rights of parties with a legitimate interest, such as family members, to access information concerning the fate of victims of enforced disappearance and to receive compensation for material and moral damages where appropriate. In addition, for the past several years the Human Rights Council has addressed the issue of the right to truth in a series of resolutions aimed at strengthening it as a principle of international law.[f]

Against this background, Switzerland decided to use the "principles against impunity" as a conceptual framework for "dealing with the past".

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[b] Switzerland uses the term "dealing with the past" in preference to "transitional justice" because transitional justice is often too narrowly identified only with juridical mechanisms and because it views dealing with the past as a long-term process that is not limited to a transitional period.

[c] See the reports submitted by Theo Van Boven (E/CN.4/Sub.2/1993/8; E/CN.4/Sub.2/1996/17; E/CN.4/1997/104) and Cherif Bassiouni (E/CN.4/2000/62) on reparations. Concerning best practices in transitional justice, see the analytical study on human rights and transitional justice (A/HRC/12/18 and A/HRC/12/18/Add.1) prepared by the Office of the United Nations High Commissioner for Human Rights in 2009. With regard to the reports on impunity, see note g below.

[d] S/2004/616, para. 23.

[e] Ibid., para. 8.

[f] In 2006 and 2007, the Council welcomed two studies prepared by the Office of the United Nations High Commissioner for Human Rights on the right to truth as a legal standard and instrument (E/CN.4/2006/91 and A/HRC/5/7, respectively). In 2009, a more specific investigation followed on the role of archives and witness protection in realizing the right to truth (A/HRC/12/19).

The principles against impunity were initially formulated by Louis Joinet in his final report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the question of impunity in 1997 and were later revised by Diane Orentlicher in 2005 at the behest of the Commission on Human Rights.[a] The importance of the "Joinet/Orentlicher" principles lies not only in the formulation of the principles themselves, but also in the fact that they are based on the precepts of State responsibility and the inherent right of redress for individual victims of grave human rights violations. As such, the principles against impunity do not entail new international or domestic legal obligations, but identify mechanisms, modalities and procedures for the implementation of existing legal obligations under international humanitarian law and international human rights law.[b]

Taken from both a normative and a legal perspective, the principles against impunity provide a useful framework to conceptualize dealing with the past. These principles identify four key areas in the struggle against impunity, which, in turn, provide a comprehensive scheme for dealing with the past: (a) the right to know (the right of victims and of society at large to know the truth; the duty of the State to preserve memory); (b) the right to justice (the right of victims to a fair and effective remedy; the duty of the State to investigate, prosecute, and duly punish); (c) the right to reparation (the right of individual victims or their beneficiaries to reparation; the duty of the State to provide satisfaction); and (d) the guarantee of non-recurrence (the right of victims and society at large to protection from further violations; the duty of the State to ensure good governance and the rule of law).

B. Dealing with the past from a holistic perspective: a diagram and mapping tool[c]

In post-conflict situations or other situations of violence, needs are many and it is hard to tell which needs should be given priority. The needs identified by the Secretary-General's report (S/2004/616) are often not addressed in a holistic way, or are addressed without any coordination among actors and donors. Continuity of efforts is seldom foreseen. Furthermore, where States are fragile, there is a danger that transitional measures are not planned within a long-term rule of law perspective and that transitional initiatives become permanent, replacing rule of law institutions.

Faced with these difficulties, Switzerland, in collaboration with the Swiss Peace Foundation, has designed a diagram (see end of present submission) that illustrates some of the main mechanisms and procedures associated with the four principles cited above.

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[a] E/CN.4/Sub.2/1997/20/Rev.1 and E/CN.4/2005/102/Add.1, respectively. The Orentlicher revision focused on identifying best practices in combating impunity and did not significantly reformulate the principles themselves.

[b] See also the preamble to the Basic Principles and Guidelines contained in the annex to General Assembly resolution 60/147.

[c] The dealing with the past diagram developed by Switzerland can be found at the end of the present submission. For a more detailed description of the Swiss approach to dealing with the past and the use of the diagram, see Jonathan Sisson, "A conceptual framework for dealing with the past" in Mô Bleeker (ed.), Dealing with the past, *Politorbis* No. 3, 2010, pp. 11-15.

Starting from the responsibility to address the needs of victims and the accountability of perpetrators in the innermost circle, the diagram focuses on the linkages between the different areas of activity in dealing with the past, the idea being that, depending on the context and circumstances, any one of the four key areas might be an entry point for engagement.

In addition, the diagram attempts to illustrate the transformative dimension of dealing with the past as part of a long-term process of democratization in post-conflict societies. Significant progress made in any one or more of the four areas, such as the establishment of a truth commission in connection with the right to know, or the successful introduction of reforms to the security sector in connection with the guarantee of non-recurrence, will provide satisfaction, ensure accountability and strengthen public confidence in State institutions.

For example, progress in dealing with the past strengthens the rule of law and, ultimately, could contribute to reconciliation among divided communities. A key factor in this process is the transformation of identities. If persons identify themselves predominantly as victims or perpetrators at the beginning of a process of dealing with the past, this should change gradually over time. Being a victim or perpetrator may still be a personal experience, but social and political identities are predominantly founded on the sense of being a citizen in society with the rights and duties of citizenship, as part of the new social contract. Reinforcing civic trust is a crucial goal of the transitional justice process.

It should be added that the dealing with the past diagram may also be used as an analytical tool to identify the activities of international, national and local actors in the four principal areas. Depending on the context, an analysis of one area, such as the right to know or the right to justice, may reveal a diversity of actors on different levels, while other areas, for example the right to reparation, show hardly any activity at all. The diagram is therefore useful not only for assessment purposes but also as a strategic instrument to identify entry points and potential partners around specific dealing with the past issues. On the basis of this analysis, a realistic, comprehensive strategy for dealing with the past can be developed, reflecting the contingencies of political context, local culture, ownership, sequencing and budgetary priorities.

Interestingly, the *World Development Report 2011: Conflict, Security and Development* very much supports the transformative and integrated approach developed by Switzerland. In this regard, it demonstrates the relevance of this approach not only for peacebuilding and conflict prevention but also for creating an environment conducive to sustainable development. It makes a strong case for fostering approaches combining development, diplomatic, justice and security instruments.

C. Activities by Switzerland in the field of rule of law and transitional justice

Since 2004, Switzerland has engaged in numerous activities aimed at strengthening the normative and legal standards of transitional justice and further developing its own institutional capacity and expertise in this regard.

1. Normative and legal standards

Human Rights Council. As mentioned above, long-term studies undertaken by special rapporteurs and experts of the United Nations, especially at the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights, have been instrumental in elaborating basic principles in the field of reparations and impunity and in formulating best practices in transitional justice. Since 2006, Switzerland, in cooperation with other countries, especially Argentina, has regularly sponsored resolutions in the Human Rights Council on human rights and transitional justice, encouraging the elaboration of additional elements of transitional justice such as reparation, truth commissions, archives and witness protection. In the latest resolution, the Council requested from the Office of the United Nations High Commissioner for Human Rights an analysis of the relationship between disarmament, demobilization and reintegration and transitional justice.[j] The report will be published in September 2011. Switzerland also contributed to the drafting of the Nuremberg Declaration on Peace and Justice.[k]

Dealing with the past and mediation. It is now generally accepted that peace, justice, human rights and development are strongly interdependent and mutually reinforcing, and that they need to be pursued in accordance with the applicable rules of international law such as international humanitarian law or international criminal law. But the implementation remains a challenge for all the actors involved. Seeking to address this gap, Switzerland advocated a pragmatic approach. The issue is not whether to include transitional justice measures in peace processes. Rather, it is how and when they can be integrated in a constructive manner. Taking into consideration the Joinet principles, this approach should be further developed, with particular attention to non-judicial measures.

2. Institutional capacity and expertise

Task force for dealing with the past and the prevention of mass atrocities. As a means of strengthening its mid- and long-term institutional capacity in the field of transitional justice, Switzerland has created an inter-agency task force for dealing with the past and the prevention of mass atrocities, composed of experts in peace promotion, justice and development, that will serve as a national focal point on these issues, enhancing a whole-of-Government approach. Through the task force, Switzerland is focusing its efforts on the linkage between dealing with past abuses and preventing the recurrence of mass atrocities, genocide, war crimes and crimes against humanity.

Centre for archives and dealing with the past. Switzerland aims to contribute to the protection of archives of human rights violations by means of its centre for archives and dealing with the past, created in May 2011.

Swiss expert pool for civilian peacebuilding. For the past several years and upon request, Switzerland has increasingly seconded experts from its expert pool to fill positions in conflict and post-conflict countries in connection with the rule of law and transitional justice. Requests range from experts in forensics to legal advisers to police and customs officers. In addition, Switzerland has established the position of peacebuilding adviser, also in charge of dealing with the past strategies,

[j] See A/HRC/12/50, chap. I, resolution 12/11, para. 21.

[k] www.peace-justice-conference.info/declaration.asp.

at Swiss embassies in several conflict and post-conflict countries, as well as a regional adviser for Eastern Europe.

Dealing with the past course. To ensure midterm capacity-building, Switzerland has set up an advanced learning course in dealing with the past for its staff, the Swiss expert pool, and senior professionals from other governmental and multilateral agencies and civil society organizations in conflict and post-conflict contexts.

Justice Rapid Response. Switzerland is a member of the coordinating group of Justice Rapid Response (www.justicerapidresponse.org), a multilateral standby facility to rapidly deploy criminal justice and related professionals, trained for international investigations, in the service of States and international institutions. Justice Rapid Response experts can be quickly deployed to identify, collect and preserve the most perishable information about crimes under international law and massive human rights violations, and report back to the requesting authority. If requested, Justice Rapid Response is also in a position to make recommendations as to the most appropriate remedies to be pursued. This initiative also aims at responding to a critical gap identified in the Secretary-General's report on peacebuilding in the immediate aftermath of conflict (A/63/881-S/2009/304) and the subsequent report on the review of international civilian capacity (A/65/747-S/2011/85).

D. Current challenges in the field of the rule of law and transitional justice

When disarmament, demobilization and reintegration processes begin, all too often no consistent strategy for dealing with the past or transitional justice has been developed. Precious and crucial testimonies of demobilized soldiers and combatants that could contribute to a truth/investigation commission or legal proceedings at a later stage get lost.

The reintegration aspect is often not well prepared, gender issues are not sufficiently taken into account, and remobilization may result. Experiences in the Great Lakes region and Colombia have demonstrated how this can become a major obstacle to security and peace. The analysis of the Office of the United Nations High Commissioner for Human Rights that will be published in September 2011 on the relationship between disarmament, demobilization and reintegration and transitional justice will be of great relevance.

Considerable developments have taken place since 2004 with regard to the right to justice. The same applies to the right of victims to a fair and effective remedy, which implies that victims of gross violations of human rights can assert their rights and receive a fair and effective remedy. Similarly, the criminal prosecution of the main perpetrators of gross human rights violations has also advanced: the International Criminal Court has started investigating situations and prosecuting cases,[1] 114 States have ratified the Rome Statute, and the Security Council has referred two situations to the Court. Switzerland has been a dedicated and firm supporter of the Court from the start. However, the Court can only bring to justice the most responsible persons and has limited jurisdiction and resources. It is

[1] The International Criminal Court is investigating six situations and has formally opened 12 cases.

not yet universal and has to struggle with acceptance and credibility in certain regions of the world. In view of these limitations, Switzerland underlines the importance of national prosecutions. The principle of complementarity enshrined in article 17 of the Rome Statute must be further strengthened and States should be encouraged to adapt their legislation to enable prosecution of the core crimes of genocide, crimes against humanity and war crimes.

The principle of universal jurisdiction should be further promoted as a tool to combat impunity. It should be used more actively, particularly by States parties to the Rome Statute. Switzerland has adapted its own legislation in this regard in 2011.[m] Many countries have introduced similar new legislation and considerable advances have been made regarding the removal of existing legal restrictions to the prosecution of international crimes under national law, such as prescription, amnesty, extradition, the principle of *non bis in idem*, due obedience, immunity of own Heads of States and superior responsibility.

That said, few cases are investigated and brought before national courts. Few States genuinely prosecute their own nationals for core crimes. If prosecutions take place, they are often aimed at persons of minor responsibility and not at higher ranking officials. Moreover, witness protection is still unsatisfactory in most countries. Access of victims to justice is insufficient and reparation and compensation measures associated with justice processes are often lacking.

While hybrid and international tribunals have done much to prosecute the main perpetrators of international crimes, a lot remains to be done regarding residual mechanisms, in particular with regard to the transfer of pending cases to the concerned States in accordance with international fair trial standards, witness and victim protection and the location, management and securing of archives and records. Deficiencies also exist regarding the translation of court records into the languages of the countries concerned, the sharing of databases and the use of the information gathered by international/hybrid courts for vetting processes and institutional reforms.

The question of double standards and of the accountability of external parties also needs to be addressed in order to strengthen the credibility and legitimacy of the initiatives against impunity.

This is not the only field where the above-mentioned linkages are missing: the legacy of international judicial institutions is often neglected and their support and reinforcement of domestic judicial reform programmes and institutional reform in general is marginal. International transitional justice mechanisms are often detached from the reality of the concerned States as regards language, acceptance in the population, outreach, influence on good governance and rule of law initiatives. They may be so "transitional" that little remains of their legacy. There is even a danger of creating parallel justice systems which operate with different standards and a different understanding of justice than the one anchored in the local systems. There are risks associated with transitional justice mechanisms that do not result in an efficient domestic judicial system. In the long run, conflict-related crimes may resurface in the context of organized crime.

[m] The implementation legislation of the Rome Statute has been in force since January 2011, adapting the Swiss Criminal Code with regard to genocide, war crimes and crimes against humanity. The new legislation is available in French at www.admin.ch/ch/f/as/2010/4963.pdf.

When impunity prevails, alliances between perpetrators of past atrocities and perpetrators of organized crime are often the result. This can lead to very dangerous and pernicious situations that go often hand-in-hand with a profound deterioration of security conditions in the country and compromise any prospect of sustainable development. This is one more reason to envisage sound and solid transitional justice and rule of law strategies. They should contribute to strengthening a nationally owned institutional architecture and a resilient legitimate State that operates after international actors have left the scene. The International Commission against Impunity in Guatemala is a good example of how such an international initiative can cooperate with national institutions and contribute to institutional reform.[n] Increased cooperation of transitional justice mechanisms with national and international institutions combating organized crime is necessary and crucial.

As regards forensic anthropology, which is important for the right to know and the right to justice, improvements have also been made since 2004. However, although many international initiatives have been launched,[o] local capacities in countries with high numbers of missing persons are often lacking and international standards are often not implemented. Switzerland has signed the International Convention for the Protection of All Persons from Enforced Disappearance and supports initiatives in the field of forensic medicine to determine the fate of persons still missing, such as the Division of Forensic Medicine which operates under the joint supervision of Kosovo's Ministry of Justice and the European Union Rule of Law Mission in Kosovo.

As regards the rights of victims to reparation, compensation and reparation programmes could be better coordinated with other transitional justice mechanisms, such as judicial mechanisms or truth commissions. Consultation and participation mechanisms are often inexistent and victims feel that reparation is lacking in terms of quality and does not have the rehabilitation effect it should have. The reparation programmes of the International Organization for Migration are interesting examples of how reparation may work in order to provide more sustainable support.[p] Further thought must be given to the overlap of such compensation measures with development cooperation, or even to the synergies that could exist between development and priorities in terms of reparation. Proper funding of reparation programmes is essential: in some instances, other transitional justice measures, such as tribunals, received much more financial support than victim compensation programmes. In other cases, within the disarmament, demobilization and reintegration process, former combatants — some of whom committed heinous crimes — received financial support, while the victims waited for many years before receiving any concrete support from reparation programmes. This uncoordinated succession of events is doing harm to the conflict transformation process; it is not understood by the people concerned and may impede the objectives of transitional justice as a whole.

[n] See http://cicig.org/index.php?page=home-page. See also Andrew Hudson and Alexandra W. Taylor, "The International Commission against Impunity in Guatemala: a new model for international criminal justice mechanisms", *Journal of International Criminal Justice*, vol. 8, No. 1, pp. 53-74.

[o] For example, the International Commission on Missing Persons: http://www.ic-mp.org/about-icmp/.

[p] See www.iom.int/jahia/Jahia/about-iom/organizational-structure/reparation-programmes/lang/en;jsessionid=2E0C3F182BB9A9F4E358BFD195849E04.worker02.

E. Conclusions and recommendations

A United Nations mechanism to support and advise countries developing rule of law and transitional justice processes

Norms and standards for the rule of law and transitional justice have developed significantly since the mid-1990s. The implementation is far from satisfactory, owing to the lack of a consistent approach and coordinated efforts. Answers must be developed in a way that secures national ownership. Countries developing rule of law and transitional justice processes could benefit from support and guidance from a United Nations mechanism established specifically to dispense such advice.

Approval by the General Assembly of the Joinet/Ohrentlicher principles against impunity

Just as the principles for reparation have been approved by the General Assembly, it would be useful to have the Assembly approve the Joinet/Ohrentlicher principles against impunity. This could be an important contribution to the development of norms and standards in this field.

Interdependence of civil, political, economic, social and cultural rights

The interdependence of civil and political rights on the one hand, and economic, social and cultural rights on the other, was taken into account in the first working paper of El Hadji Guissé and Louis Joinet (E/CN.4/Sub.2/1992/18). Further documents, however, were restricted to civil and political rights (see E/CN.4/Sub.2/1997/8). Yet it is unavoidable to include the interdependence of civil and political rights and economic, social and cultural rights in the global rule of law and transitional justice approach. This could lead to a new United Nations report in the coming years that could contribute to increased coordination among all actors of rule of law and transitional justice in post-conflict situations, including donors.

Dealing with the past diagram inspired by the Joinet/Orentlicher principles

Source: Federal Department of Foreign Affairs Swiss Peace Foundation, inspired by the Joinet/Orentlicher principles.

Turkmenistan

[Original: Russian]

In line with Turkmenistan's programme of radical reform and transformation, President Gurbanguly Berdimuhamedov has proclaimed as one of the Government's priority tasks the improvement of the legal framework of the State and the alignment of the country's law with universally recognized international standards. The process of updating the relevant legislation of Turkmenistan is currently in progress.

The process of updating the country's legislation is being actively integrated into the campaign to reform the country's legal system, through the systematic efforts of a special commission set up to improve the legislation, monitor the national legislative framework and incorporate universally recognized standards of international law in Turkmenistan's domestic law.

In addition, an inter-agency commission, set up by special order of the Head of State to ensure compliance by Turkmenistan with its international commitments in the field of human rights, is working to coordinate the work of ministries and

departments on the observance of international human rights obligations, and drafting of recommendations on the incorporation into the country's domestic law of international standards and the recommendations of United Nations treaty bodies.

Turkmenistan's legislation comprises an elaborate system for the upholding in law and the protection of the human and civil rights enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights.

Turkmenistan has ratified more than 120 international instruments, some 40 of which have to do with human rights.

Currently, to the list of international instruments to which Turkmenistan has acceded we may add the following treaties: the International Convention against Doping in Sport (25 September 2010), the International Labour Organization (ILO) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour — ILO Convention C182 (25 September 2010), the Optional Protocol to the Convention on the Rights of Persons with Disabilities (25 September 2010) and the World Health Organization (WHO) Framework Convention on Tobacco Control (26 March 2011).

In accordance with its obligations, Turkmenistan is incorporating the basic principles and provisions of those instruments into its domestic law and strictly monitoring their implementation. The attention of both the Government and the public is constantly focused on the field of human rights.

Evidence of the application in practice of the Government's policy to uphold Turkmenistan's international human rights obligations, relating to the comprehensive protection of human rights, may be seen in the adoption on 26 September 2008 of the new version of the Constitution of Turkmenistan, which incorporates almost all the fundamental provisions of international human rights conventions and declarations, including those relating to the rule of law.

In 1998, Turkmenistan adopted the Acts of Government Authorities, Voluntary Associations, Local Authorities and Officials in Breach of the Constitutional Rights and Freedoms of Citizens (Court Appeals) Act, which provides legal underpinnings for the process whereby citizens can appeal through the courts against the acts or decisions of government authorities, voluntary associations, local authorities and officials which infringe their constitutional rights and freedoms, and which also lays down the procedure for consideration by the courts of such appeals. On 14 January 1999, Turkmenistan adopted the Citizens' Appeals (Procedure for Their Consideration) Act, which stipulates the arrangements whereby the citizens of Turkmenistan can exercise their right to appeal to State, public and other authorities, enterprises, organizations and institutions, irrespective of their form of ownership, and regulates the procedure for the consideration of such appeals from members of the public.

The State commission for the consideration of appeals by members of the public regarding the activities of law enforcement agencies, which is a standing body, is continuing its work to ensure protection of the rights and freedoms of individuals.

In recent years, as part of the legal reform process under way in Turkmenistan, a number of statutory instruments protecting human rights have been adopted. These include the following laws of Turkmenistan: the Courts Act (15 August 2009), the Procuratorial Service of Turkmenistan Act (15 August 2009), the Public Defence

System and Public Defence Work in Turkmenistan Act (10 May 2010), the Code of Criminal Procedure (18 April 2009), the Labour Code of Turkmenistan (18 April 2009), the Criminal Code of Turkmenistan (10 May 2010), the Criminal Enforcement Code of Turkmenistan (26 March 2011) and the Aliens in Turkmenistan (Legal Status) Act (6 March 2011).

Under the Courts Act of Turkmenistan, citizens of Turkmenistan have the right to judicial protection against the wrongful actions of State authorities, voluntary associations and officials, against any affronts to their honour and dignity and against any encroachments on their life and health and on their individual, political, human and civil rights and freedoms enshrined in the Constitution of Turkmenistan. Any changes to the procedure for the protection of the rights and lawful interests of citizens may only be made by the laws of Turkmenistan.

Foreign citizens and stateless persons in the territory of Turkmenistan enjoy the same right to protection in the courts as that possessed by citizens of Turkmenistan under the country's law and international treaties. The new law on aliens, the Aliens in Turkmenistan (Legal Status) Act, has still further extended the rights of foreign citizens to protection of their interests in the courts and by other means.

Under article 7 of the Procuratorial Service of Turkmenistan Act, in the exercise of their duties, employees of the procuratorial service shall ensure observance of State-guaranteed human and civil rights and freedoms, irrespective of ethnic affiliation, race, sex, origin, wealth and official position, place of residence, language, religious views, political conviction or party membership.

Citizens are entitled to receive explanations and information on restrictions of their rights and freedoms and to familiarize themselves with materials relating to their cases upon the conclusion of inspections or investigations. Any person who believes that his or her rights, freedoms and lawful interests have been infringed by the actions of an employee of the procuratorial service is entitled to appeal against such actions to a higher-ranking procuratorial official.

The Constitution of Turkmenistan guarantees the right to the assistance of a qualified lawyer at any stage of legal proceedings (article 108).

Under the Public Defence System and Public Defence Work in Turkmenistan Act, the public defence system is a professional association of lawyers, based on the principles of self-regulation and set up for the exercise of public defence services, which functions as a legal institution of civil society and does not form part of the system of State executive and administrative bodies. The State is committed to the provision to all persons of the necessary professional legal assistance, guarantees the equal right of all individuals and legal entities in the territory of Turkmenistan to receive legal assistance and information about the nature of such assistance and the means of obtaining it and also to receive free legal aid, and ensures protection of the rights of certain individuals in the cases stipulated by the law of Turkmenistan.

A significant milestone in Turkmenistan's social and political progress was the adoption of the country's new Criminal Enforcement Code, which regulates legal matters in the country's prison system. Turkmenistan's criminal enforcement legislation is based on such universally recognized principles as due process (the rule of law), humanitarianism, democracy, the equality of convicted persons before the law, the differential treatment and consideration of individual circumstances in

assigning punishment, and the need to uphold the right of all persons deprived of liberty to humane treatment and respect for their inherent dignity as human beings.

A separate chapter of the Code is devoted to specific aspects of the serving of sentences by juveniles, with due consideration for their age, psychological and emotional development and other characteristics, and it also makes provision for juvenile offenders to have more contact with the outside world and for their rehabilitation and reintegration into society.

The Code also stipulates that convicted persons shall receive assistance upon their release from custodial sentences.

Having ratified the fundamental international human rights instruments and complying strictly with its international commitments thereunder, Turkmenistan is continuing its efforts to reform its domestic human rights protection system, systematically and steadfastly fulfilling the obligations that it has assumed towards the international community.

At the current time, Turkmenistan is continuing its active and fruitful cooperation with international organizations and is staunchly complying with its international obligations.

The country is putting into effect the next stage of its United Nations Development Assistance Framework for the period 2010-2015, through cooperation between the Government of Turkmenistan and the United Nations agencies accredited to Turkmenistan. Cooperation is being pursued in areas of economic and social policy, in the legal sector and in environmental protection. Forward-looking projects on the strengthening of democracy and the rule of law, the promotion of human development for the attainment of the Millennium Development Goals, enhancements in the area of sustainable development and the furtherance of peace and security have been designated as areas of paramount priority.

The Government of Turkmenistan, the European Union, the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme are currently carrying out a joint project on strengthening the national capacity of Turkmenistan to promote and protect human rights (2009-2012), with a view to further reinforcing the constructive dialogue on human rights, promoting democratic processes and facilitating the timely preparation of the country's national reports.

To date, the inter-agency commission set up to ensure compliance by Turkmenistan with its international commitments in the field of human rights has drafted and submitted national reports, in compliance with the duly ratified schedule, to the respective United Nations treaty bodies on Turkmenistan's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Elimination of All Forms of Racial Discrimination.

The policy of radical reform, initiated by the Head of State, is being assiduously implemented and is promoting the continued dynamic development of the existing system of national law and of all spheres of the country's public, economic and social life.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

For the United Kingdom, the rule of law is at the heart of both its unwritten constitution and its foreign policy. We consider the development of the rule of law to be a principle of critical importance in both international relations and development. At an international level, respect for the rule of law is central to both conflict prevention and conflict resolution. At a national level, re-establishing and reinforcing the rule of law and associated institutions are key to helping to create and sustain the necessary conditions under which activities such as peacebuilding in a post-conflict society can take place. Respect for the rule of law and property rights, inclusive economic empowerment as well as appropriate policy and regulatory frameworks are critical to achieving equitable and effective development. But rule of law at international and national levels are quite different subjects, with discrete goals and distinct actors.

The United Kingdom believes it important for all States to settle their disputes peacefully. But the means for peaceful settlement should be left to the parties, and they might include both judicial and non-judicial means such as mediation. At the international level, judicial means of settlement remain a vital part of the mechanism for the peaceful settlement of disputes and advancing the rule of law.

The International Court of Justice stands at the apex of the international machinery, and its contribution to the peaceful settlement of disputes and the advancement of international law is profound. The United Kingdom notes and welcomes the increased use made of the Court over recent years. Many cases come before the Court because of specific treaties or agreements between the parties. However, it is also an option for Member States to accept the compulsory jurisdiction of the Court in accordance with Article 36 (2) of its Statute. The United Kingdom is the only permanent member of the Security Council to have accepted the Court's general jurisdiction in this way. We call upon other Members of the United Nations that have not yet done so to consider taking a similar step.

The United Kingdom also plays a unique role at the heart of all the various international criminal courts and tribunals, whether as State party to the Rome Statute of the International Criminal Court, a member of the Security Council with respect to the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, and a large contributor and member of the management committee of the other three tribunals: the Special Tribunal for Lebanon, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia. We are committed to ensuring that these bodies receive the full support of the Security Council as they seek to carry out their mandates as effective and efficient instruments of international justice.

The United Kingdom has played a leading role in ensuring an end to impunity wherever possible. We have long been a champion of improving sanctions listing and de-listing procedures as a vital tool in the fight against terrorists and others who have violated international standards of justice, and we welcome recent improvements to the sanctions regime. When faced with a worsening situation in Libya whose citizens were being targeted by their own Government, the United Kingdom was actively involved in drafting Security Council resolution 1970 (2011) and in referring the situation in Libya to the International Criminal Court.

The United Kingdom understands transitional justice as the set of mechanisms employed in societies undergoing a transition to democracy. This process usually takes place after armed conflict (national or international) or a lengthy dictatorship that has persistently violated human rights and/or international or humanitarian law. The aim of transitional justice is to deliver justice and to reach reconciliation through combating impunity. There are mechanisms that are judicial, non-judicial or a combination of both suitable to assist the political reform process.

The most common transitional justice mechanisms are:

(a) *Justice (State justice and non-traditional justice mechanisms)*. The types of mechanism that have been employed range from domestic criminal trials — through the "ordinary" criminal justice system or by establishing dedicated divisions or courts to investigate and prosecute mass atrocities — to hybrid and international criminal tribunals;

(b) *Truth (truth commissions, commissions of enquiry and/or commissions of historical memory)*. Usually fulfilled by truth commissions (national or international), commissions of enquiry (local, national or international) and/or groups of historical memory. Some truth mechanisms, as happened with the Human Rights Violations Committee of the Truth and Reconciliation Commission in South Africa, can also have important powers to investigate human rights violations;

(c) *Reparations*. These can be provided at the domestic level or the international level. They can be ordered by a court in civil or criminal proceedings or they can also take the form of a domestic administrative reparation programme;

(d) *Institutional reform*. This refers to reform of all agencies involved in the administration of justice, such as the police and judiciary, and to law reform, including reform of the national Constitution. The process may include vetting and lustration, a procedure to assess the integrity of certain individuals on the basis of their involvement in the past repression or in acts of corruption. These procedures aim to clean public institutions of incompetent or unethical officials.

All of these processes must be implemented in conformity with international law.

The extent of the effectiveness of transitional justice, whether supported through international assistance or domestic resources, depends to a greater or lesser extent on a number of factors, including legitimacy and local ownership, government commitment, the involvement of civil society, outreach, capacity-building, appropriate timing and the use of a combination of mechanisms.

The United Kingdom believes it beneficial to view transitional justice as a complex and continuing process of transformation. The end of conflict or repression is not usually marked by a specific date or event. A country is considered to be in transition when the commission of atrocities stops and serious efforts are put in place to deal with the legacy of mass abuse, achieve peace and move forward. It is possible to start a process of transitional justice while the conflict is still active and, although this may give visibility to victims' needs and suffering and create pressure on those responsible for the violence to enter a genuine peace process, it is likely to be less effective in terms of democratization. Transitional justice measures that have evolved over a longer period and have strong national ownership tend to result in greater internal political stability.

The United Kingdom believes it is also important to balance the desire to offer a combination of different transitional justice mechanisms such as trials, amnesties or truth commissions as appropriate to the specific post-conflict situation and local preferences, with the need to ensure that any such combination does not result in overlapping or even contradictory roles, as happened in Sierra Leone when some perpetrators did not tell the truth at the Truth and Reconciliation Commission for fear that they would be prosecuted at the Special Court for Sierra Leone which was operating at the same time.

The United Kingdom encourages any internationally supported transitional justice mechanism to involve local consultation and participation to ensure that the mechanism chosen is culturally and contextually appropriate. Widespread and transparent local consultation will help engender a sense of ownership and involvement that should reduce the risk of reigniting the conflict.

At a national level, the Government's commitment to and implementation of structural change is critical to achieving sustainable peace and developing a culture of the rule of law. However, Governments that emerge out of conflict societies often do not have a track record or experience of working in a positive human rights environment. In such cases the role of civil society becomes more critical in ensuring the success of any transitional justice mechanism. The United Kingdom believes it essential for the international community to work not just with any post-conflict Government but also with civil society, as the latter is often in the strongest position to provide insights into the local culture and context in order to determine the most relevant goals and project design. Civil society is often also best placed to assist with issues such as data collection, public consultation, monitoring of remediation activities and victim assistance.

Often the worst affected victims in a conflict are also the hardest for the international community to reach: remote rural populations, women and children. If transitional justice mechanisms are to offer such people a degree of remediation, innovative and appropriate methods of outreach, probably best undertaken by civil society, are needed. If the transitional justice mechanisms are to have a chance of lasting success, they must be transparent and open to all those who have suffered.

The restoration of national rule of law as a key function of the State after conflict is of critical importance. Transitional justice mechanisms ideally should contribute to domestic rule of law. It is likely that ordinary domestic systems will be unable to respond to the demands for justice during the transition process. This may be because the judicial system was depleted during the conflict and requires reform in order to ensure that it functions in a fair and independent manner. It is also likely, as in the case of Rwanda, that domestic systems will struggle to deal with the magnitude and gravity of the crimes and the sheer number of victims. There may be lack of political will to investigate and prosecute such crimes, which will result in deficient justice attempts rather than true justice. As a means of strengthening domestic judicial capacity and experience, the United Kingdom supports, for example, training local lawyers to replace expatriate lawyers in genocide trials or helping to establish a culture of human rights by introducing concepts such as the rights of suspects to free and fair trials and humane treatment in prison.

The promotion of the national rule of law is an area where the international community's ability remains weak. Implementation of the recommendations in the Secretary-General's 2009 report on peacebuilding in the immediate aftermath of

conflict (A/63/881-S/2009/304) is key to ensuring a more effective and coherent international approach to peacebuilding. We need to see tangible improvements on the ground in sectors such as rule of law. This requires more predictable support and more effective coordination between the United Nations and other actors. We need to bring together donors and the host State and ensure that donor agencies are coordinating strategically in order to support the domestic authorities. The civilian capacity review is important here, as we need to clarify the roles and responsibilities of different parts of the United Nations and ensure that integrated planning takes place. The United Nations and the international community face stark real-world tests in this area in places such as South Sudan, the Democratic Republic of the Congo and Côte d'Ivoire in the near future and the United Kingdom believes it important for the international community to begin planning its response in a coordinated and effective way at the earliest possible opportunity.

In the promotion of the rule of law at the national level, the United Kingdom believes that the Rule of Law Coordination and Resource Group and the Rule of Law Unit can play an important role. Rather than looking at creating new structures and mechanisms, we favour the strengthening and development of the existing structures under strong leadership from the Deputy Secretary-General. Like a large and complicated machine, the international community has many moving parts functioning in this field. For the United Kingdom, the design and creation of more parts is not the answer. Our preferred option is to work with the United Nations to help make those parts of the United Nations system that already exist operate together more effectively.